



This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

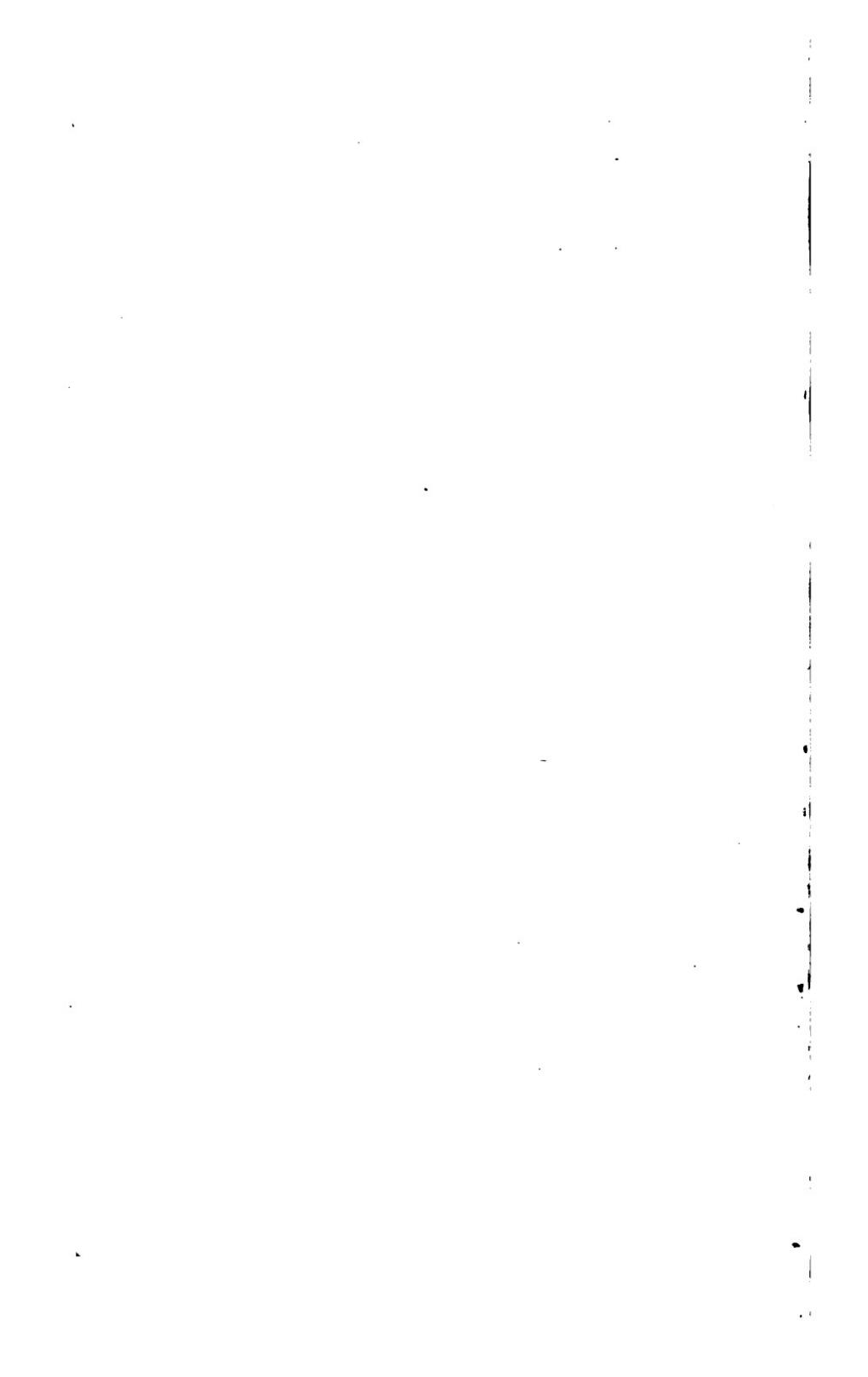
Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

- + *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
- + *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
- + *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
- + *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at <http://books.google.com/>



A

LETTER
TO THE
AUTHOR
OF SOME
CONSIDERATIONS
On the ACT to prevent
CLANDESTINE-MARRIAGES.

With a POSTSCRIPT

Occasioned by the Enquiry into the Force and
Operation of the annulling Clauses, in a late
Act for the better preventing Clandestine-
Marriages, with Respect to Conscience.

By a Country Clergyman.

LONDON:
Printed for G. HAWKINS, at Milton's Head,
in Fleetstreet, 1755.
Price 1 s. 6d.

24731 Q. 1. 2

116. 2. 1897

1522



A

L E T T E R
TO THE
A U T H O R, &c.

SIR

I AM a Country Clergyman, and, as such, think myself obliged to return you Thanks for the Regard you express for our Order in general, and for the Security of each of us in particular. You need not, thro' the frequent Experience of disguised Writers, suspect the Case of insidious Thanks, or ironical Compliments. I am serious, and am truly pleased to find so serious a Regard expressed by a Member of the *Temple* for Religion itself, and for the authorized Ministers of it.

B

You

You have given us your Thoughts on *the Act to prevent clandestine Marriages*, and have invited others to offer their Thoughts upon the same. The Subject is indeed well worthy our Attention, and the Pattern you have set us, is, in general, a proper and commendable one; for your Stile is, with an Exception or two only, calm and decent, and your Objections are urged with the Respect due to the Authority which has passed this Act. The Intelligence you give me (for I am out of the Reach of such Information myself) that *the Majority of the Assembly*, wherein some Alterations were proposed, *were of Opinion to try the whole Bill, as it now stands, and to see what other Objections might arise; that in a future Session proper Alterations might be made*, encourages me to think and speak the more freely on this Point, to second your Objections where they appear to me to be of Weight, and to clear and answer them, where they appear to be founded on a mistaken Representation of the Case,

You begin with Assurances of your Disinterestedness and Impartiality, and sole Regard to *the Benefit of the Publick, and the Good of Mankind* in your Undertaking; and as it is but Justice to give Credit to such Assurances, where nothing appears to the contrary, I shall hope for the like Regard to be paid to the like Assurances. I am as disinterested as you, or any one living

living can be, with Respect to Prejudice or Favour towards those, who have been for or against this Measure. I have, as you say, no political views. I am not engaged in any Opposition to publick Measures, as such; I am not, by any Patronage of the Great, directed to approve or disposed to vindicate every Step of any Kind that is taken; but in Cases of this Kind, where the Nature of my Profession, and the Prosecution of the Studies peculiar to it, may be supposed to qualify me to judge, I follow my own Judgment very freely. Uninfluenced then in this Case by mere Authority, desirous to be influenced only by Truth and Reason, I now set myself to the Examination of the *Act* in question, and particularly, of your Considerations upon it; and shall offer to you, and to the Publick, my impartial Reflections upon both.

We shall have no Dispute about Preliminaries. That Marriage is a divine Institution—a Right of Nature—the Basis of Society—the Remedy against the greatest Evils—the Establishment of earthly Happiness—I shall most readily agree with you. That this sacred Institution was abused, perverted, profaned, you will as readily agree with me; and therefore, as you say, *it gave the sober and well-meaning Part of Mankind Pleasure, when they heard the Matter was brought before the Legislature, and a Bill ordered to prevent this great and deplorable Evil.*

The only Question then between us is, whether the Bill lately passed is well calculated for this Purpose; or whether it be not rather faulty in some Parts, and defective in others. It should be every good Man's Wish and Endeavour that it may be made as compleat as possible; may be corrected, if in any Point it contains any thing contrary to the Law of God, and may be improved and made, as far as possible, contributive to the Welfare of Men.

You undertake therefore to consider the *Act* lately passed to prevent clandestine Marriages, and to point out such Parts as seem to you exceptionable; and to propose such Alterations and Amendments, as in your Opinion are necessary to answer the Intention and Title of the *Act*.

You premise, that Marriage is an Institution approved by Christ; and concerning which he has given Directions in the Gospel. These Directions we are bound to obey; nor can any human Law dispense with, annul, or make the least Alteration in them. I agree with you in the Position, tho' I shall differ widely from you when we come to the Application of it. It is sufficient at present to say, that no Directions of Christ in the Gospel are reversed or contradicted by this *Act*. He has fixed the Indissolubleness of Marriage, but has not prescribed the Ceremonial of it. He has not fixed one unalterable Form of Marriage in

in all Ages and Nations, but has left that Point to be settled by the Laws of each respective Country. When therefore the Laws in Being are by Experience found obscure or defective, either difficult to be understood, or easy to be evaded, it is an Act of Wisdom in the Legislature to determine this Point more clearly and fully, to ascertain what shall, and what shall not constitute Marriage ; and this is enforcing, not contradicting the Directions of Christ in the Gospel concerning it. Marriage is always indissoluble ; but what shall be the *Method* of contracting it is left to the Laws of the Land where we live to determine, and every Christian is bound in Conscience, by many express Directions of Christ, to conform to those Laws ; and contracts not Marriage, but enters into a dishonourable Engagement, if he cohabits with any Woman on any other Terms. But I shall have occasion to resume this Question, and repeat this Observation, in remarking on another Part of your Performance.

Your first express Exception is to the Ratification of Marriage-Licences. I am not disposed to turn an Advocate for Licences farther than the Force of Truth compels me. If the supreme Authority should see fit to abolish them all, I should not be dissatisfied ; but as they stand at present, your Objections against them appear to me to be overcharged. Were they entirely removed, and the Publication of Bauns indispensably

sably required, yet I could put many Cases, wherein Inconveniences may *possibly* happen; and the Intent of the Legislature be defeated, even notwithstanding that Provision. And should I propose still stricter Clauses to obviate those possible Inconveniences, you would probably object to that very *Stringency*, and apprehend sad Consequences from the many Cloggs and Difficulties thrown in the Way of Matrimony.

You first charge the Ratification of Licences as an Inconsistency in the Act itself. You fear it will undo all that the former Clauses have done; nay it will be construed virtually to repeal them. — For what, say you, hath the former Clause done? It hath declared an Evil (*clandestine Marriages*) and provided a Remedy; (*Publication of Bans and publick Marriages*) what doth this Clause do? It gives a Liberty (for a little Money) to revive clandestine Marriages. But how so? Are not the Limitations of Time and Place for Marriage, as much continued in the Method of Licences, as of Publication of Bans? how then can they be called *clandestine*? had this Objection been urged only against the Archbishop's Licence for marrying at a late Hour, and in a private Chamber, it would have had some Meaning and Force; but a Marriage by a common Licence must be solemnized in a publick Church, and at a publick Hour, and must be as fully attested as any in the way of Bans. It is playing therefore with Words, and laying stress on an *Ambiguity*,

to

to call that a *clandestine Marriage*, which is not so either in common Acceptation, or in the Sense of the Act; and then to charge the Act with Inconsistency, on account of such different Meaning, is most unreasonable and unjust.

But if by *clandestine* you mean unknown to particular Relations and Friends, this may sometimes happen in the Case of Banns as well as of Licences, and as the Law now stands, may be almost as likely to happen in the one Case, as in the other. In the Case of Licences you have now a positive Oath of the Consent of Parents, if the Party be under Age, and therefore they must be acquainted with it, that their Consent may be obtained. Whereas, in the Case of Banns, if the Parties can contrive to be in another Parish where the Parents are unknown, they may never hear of it, and so the Marriage may proceed regularly and securely even without the Consent of Parents, because without their Knowledge.

Again, there must be a positive Oath that the Party has been a Month in the Parish, where the Marriage is to be celebrated, before the Licence can be obtained, but there is no such Clause for the like continuance of Residence in one fixed Place before a Publication of Banns, and a Marriage in Consequence of them. The Minister indeed is not obliged to publish the Banns,

Banns, unless he has seven Days Notice in Writing beforehand, but he *may do* it, if he pleases. It is a *discretionary* Power in him, and as the most prevailing Opinion is, that no Impediment should unnecessarily be thrown in the Way of Matrimony, it is probable that he will do it with less Notice, or upon an *immediate* Request; and then the Banns requiring only a Fortnight and a Day, the Parties may in a new Parish be married in just half the Time that they can be by any Licence.

I need not remark much on your Distinction between *Laws* and *Dispensations*, and the Necessity of repealing the one, or forbidding the other. In many Cases there may be great Reason for a general Law, and yet there may be as great Reason for a dispensing Power in particular Instances. But *Licences* are not in the Nature of such *Dispensations*, nor were intended as such. They were not designed for a few only in some peculiar Exigencies, but for *general* Use, even for as many as should choose this Method of celebrating their Marriage. It is not necessary to alledge any particular Cause why you choose to avoid the Publication of Banns, but it is granted without any Condition, save those necessary ones, which are presupposed in the Publication of Banns. The Security of an Oath is given in this Method for those Articles, which alone could justify the Obstruction of the Marriage, and the forbidding of the Banns in the other;

and at whatever Period Licences were first introduced, or for whatever Ends allowed, they are now founded on the same Authority as the Publication of Banns, and justified by the same Laws of the Land.

When therefore you say that *Marriage is a Right of Nature, and where it is consistent with the Law of God and the Constitution, it wants no Licence or Dispensation for its Celebration,* you say what is most true, but what does not in the least avail towards the Determination of the Point in Question. For it is just as agreeable to the Constitution, that Satisfaction be given to the Publick as to the Impediments which alone ought to prevent Marriage, by Examination upon Oath before an ecclesiastical Judge, as by open Enquiry in the Congregations where the Parties then happen to reside. If Conscience prevailed as much as it ought, this would in some Cases be a more effectual Remedy than the other, against all that is understood by *clandestine Marriage.* The Licence therefore is not intended to dispense with any thing in itself necessary, but to take certain Security for the same Thing in a different Method.

But you come now to the Reason of the Thing. *To find out the Impediment against the Marriage proposed, and give such as have a Right a Power of Objection, will be effectually answered, you say, by proper Publication of Banns: not always ef-*

fектually for the Reasons before assigned ; by the Publication of Bans as they now stand appointed : Yet I question whether you will agree with me in attempting to make it more effectual. If we are at Liberty to make Proposals to our Superiors for improving this Act, I should think it would be useful to require a Month's Residence before the Publication of Bans, with an exact Determination what shall be deemed *Residence*, and, (if it will not offend you) with a *Dispensation* in Favour of Sailors newly arrived at a Port, Waggoners, and Coachmen, who attend stated Stages, &c. Or it might be proper that the Bans should be more frequently repeated ; or that some Distinction at least should be made between Strangers and Parishioners constantly residing. With these Improvements, and the Abolition of all Licences, no improper Marriages could easily take Place, and no considerable Difficulty would lie in the Way of any proper ones ; and you will have no Opposition from me, if you wish that the Act were so amended.

But in these Cases it may be proper to consider what is most *practicable*, and not only what in our own Judgment might be most useful. I believe you may foresee that you will not prevail for the Abolition of Licences, but perhaps we may have better Success in attempting and recommending the better Regulation of them. Nor do I think that they are so utterly wrong and

and prejudicial, as that they may not be made innocent, and even useful. And you yourself have proposed such Regulations for them, as would prevent all probable Mischief from them.

The many ill Consequences which you specify, as having arisen from them, are valid Objections against the former State and Management of them, but will not hold equally against the Continuance of all Licences, when they are properly and wisely regulated. You say, *Adultery, Bigamy, (I may add Incest) and the entire Destruction of reputable Families, have arisen from these Devices.* But the Legislature has now in a great Measure prevented the Danger of these Evils by some wise Precautions, and might do it more effectually by the Addition of a few others.

With Respect to the present Provision made against this Evil, you say, *how easy is it, within the Cities of London and Westminster, for a Sharper to secrete himself, or a young Woman of great Fortune, for four Weeks in a Parish?* The latter Point would not be so easy, as the *young Woman of great Fortune* so absenting herself might, and probably would soon be enquired after, advertised, and her Name notified to all Offices, and Officers, who have Authority of granting Licences; and then we may suppose that no Licence could in that Case be obtained. But it is enough to your Purpose that the

Sharper may secrete *himself* for four Weeks in Town, and then, if the young Woman will run away with him from the Country to Town, he may obtain a Licence by Virtue of his Oath, and may be married in his Parish in Town. And thus, you say, *this Clause in fact by Implication establishes Marriage-Licences, and no Way whatever prevents the Grievance they now occasion.*

But give me Leave to observe in the first Place, that this Fraud is as practicable in the Case of Bans as of Licences, and would not be effectually prevented by removing entirely the Power of granting Licences, nor can be by any thing less than the severest Penalty on the Person guilty of the Fraud. I will suppose in this Case that the Sharper, instead of trying to get a Licence, puts up his Name with that of the Woman whom he intends to steal, in one of the large Parishes in *London*, or *Westminster*, where great Numbers are asked, whom the Minister cannot personally know; and where he resides on Purpose with this View, that if the Minister takes the Precaution of the seven Days Notice, and actually enquires after him, he is heard of and known. When they are thus out-asked in Town, the Woman runs off suddenly to him, and he, instead of taking a false Oath for a Licence, makes a false Certificate of their being asked in her Parish in the Country; and thus presenting her in a mean Habit, they are
not

not suspected, but are married immediately before she is well missed, or can well be enquired after.

This is a Case parallel to that which you have put, and shews that the Difficulty is not peculiar to the granting of Licences, but lies as strongly against the present Institution and Management of Banns. I have thought that it might in a great Measure be prevented by confining the Marriage solely to the Church where the Woman lives ; but the Mischief can only be effectually remedied by making the Fraud *capital* in the Person who in either Case by *Perjury* obtains the Licence, or by *Forgery* exhibits a false Certificate.

But after all, you triumph without any Foundation, when you suppose your Sharper to have managed so successfully, and to have married the Party by this Contrivance, and from thence conclude this Clause in the Act to be useless and ineffectual. One would think you had at this Time forgot that other Clause of Security, that this, after all, shall be judged no Marriage, but an unlawful and void Engagement, if the Party be under Age, and had not the Consent of Parents. Your Objection to that Clause in respect of Conscience shall be considered in its proper Place. I here only observe that the Act still becomes effectual. It is declared that no Marriage is hereby contracted. The Woman is not

to be supposed to intend Marriage, as she is not to be supposed ignorant of this Act. However, in the Eye of the Law she has prostituted her Person, forfeited her Character, and lost her Friends, by not solemnizing the Office in the Form prescribed by the Laws of the Land, in which she lives, and is no more the Wife of the Man she lives with, than if she had used no Ceremony at all. She indeed is ruined by known and wilful Disobedience to the Directions of this Act, but the Man is disappointed in his Designs on her Fortune, cannot claim as her Husband: and thus the Act itself retains its full Force and Use.

*But, you say, to this Clause, namely, " that
" no Licence shall be granted to solemnize any
" Marriage in any other Church or Chapel than
" where one of the Parties should have been
" for four Weeks next before the granting such
" Licence," it added a Proviso which seems in
some Sort to repeal this (insufficient) Check upon
common Licences by exempting the Archibishop of
Canterbury and his Officers from this Provision,
and declaring it shall not be construed to extend to
deprive the said Archibishop and his Officers, of the
Right which hath liberte been used in Virtue of
the Statute of the 25th of Henry VIII, entitled,
An Act concerning Peter-Pence and Dispensations;
of granting special Licences to marry at any con-
venient Time and Place.*

This

This Proviso plainly defeats all the Benefit intended by requiring a Month's Residence, that Enquiries may be made, and the Person known, and by requiring that the Marriage shall be solemnized in a publick Church or Chapel at a publick Hour, that many may be Witnesses to it. Several Inconveniences may arise from this, which in Prudence should be guarded against, and which might be prevented even without Prejudice to any particular Person. Would it not be proper that some publick Recompence should be made to those for their Lives, whose Revenues would suffer by the Abridgment of this Part of their Office, and that their Successors should be left to take their Places with this known Abatement of their Power and Profit ?

However, the Fact is, that tho' this Right may *possibly* be abused, there is little real Danger of it. Few special Licences are granted ; none without much previous Caution. They are restrained to a particular Rank and Degree of Quality ; and the Party, I am assured, who petitions for the Licence, is personally examined by the Archbishop.

The Doubt that you suggest, whether the Archbishop hath such a Right, does not, I presume, deserve any particular Answer. The Act, and the very Words that you repeat, suppose

suppose and confirm it. The Question that you put in the next Place, *Is it proper to be continued?* is more deserving of Attention.

Now should I grant that it is not, yet I could not allow all the Reasons that you assign. You say, that *every Institution, which doth not fully answer this Purpose, (of providing against any just Impediments to the sacred Rite of Matrimony) may in some Measure be said to be repugnant to the Law of God.* But the Power granted to the Archbishop by this Act of Parliament doth not fully answer it, because, as I have already shewn, Marriages may be solemnized with Impediments, which not only the Institution of publishing Bans intended to prevent, but also the Law of God, and therefore equally repugnant to both.

If every Institution which is capable of being abused, or which is not as compleat and perfect as it might be made, is therefore to be deemed repugnant to the Law of God, it would scarce be easy to make any Law, which will not be liable to that Imputation, and hence Scruples of Conscience will unreasonably and unmeasurably be multiplied. The Licence before us may be used with Honour and Innocence. If there be any just Objection to it, this must arise from the Danger only of its being sometimes otherwise applied.

In

In stating the Nature of the Power, you again set the *Law of England* and the Archbishop's Licence in direct Opposition to one another, as contradictory and inconsistent; forgetting again that the latter is at present founded clearly and expressly on the Authority of the former. As to the Reason of the Thing, it does not, (as you say it does) *cut off every Means of finding out any of these Impediments, and provide the most secret Means for carrying on the most dangerous Frauds whatsoever.* It only appoints another Method of finding out those Impediments, and preventing Frauds, namely, by the Oath of the Party concerned; which, as it is now conducted, in my Judgment as well as yours, is not so secure as that of the Publication of Banns. Could this Method be rendered more effectual by better Enforcements and further Provisions, it might perhaps answer the main Purpose as well.

In considering the Method of obtaining the Archbishop's Licence, you form your Objections against the common Method of obtaining a Licence in Doctor's Commons, as if there was no farther Security, no different Form in obtaining a peculiar Licence for marrying at any Hour or Place. Your Zeal seemed particularly levelled against the Continuance of that Power, and any Reader

D . would

would imagine that there was no particular Care or Difficulty in providing a Licence of that Sort more than any other. Be pleased to take Information in this Case, and if you find that this is granted with more Caution and greater Restrictions, that it may not easily be abused, you must acknowledge your Want of Care in this State of the Fact, and that by confounding two different Articles together, you have greatly misrepresented it.

As to the common Licences obtained under the Archbishop's Authority, you observe rightly that the Parties are never before *him*; that the Man is generally carried by a Proctor to a Surrogate, where he takes an Oath, indeed, (*which, if false, is not Perjury at Law*) that he has consent of the Parents. This is a very material Exception, and what highly deserves to be removed by Authority.

Were a false Oath in this Case declared to be Perjury, and this Perjury made in the highest Degree penal, the Business would be done, and the Grievances now complained of as occasioned by Licences, would scarce be heard of. Real Credit might then be given to an Oath, which, as the Case now stands, is often too little regarded. The Danger of Perjury, and of many ill Consequences, is sufficiently great to warrant our Apprehensions, and to justify our Application
to

to publick Authority for Assistance, whenever this Bill shall be next reviewed.

But you push this Objection beyond all Reason and Authority. You say, *Suppose this may be bad without an Oath,—Suppose the Proctor and Surrogate should agree to dispense with the Oath—what Remedy has the Party injured?* and you answer yourself, *in the Archbifhop's Case none at all; and in the Case of a Bishop's Licence, the Officer's Security is but one hundred Pounds, against which the Person, for whom he has done this Favour, will take Care to indemnify him.* But pray, Sir, where did you find this Distinction as to the Case of the Archbifhop? The Words of the Act neither express nor imply it, but evidently exclude it. The Surrogates to his Grace's Officers are as much obliged to take the Oath and give the Bond, as any other Surrogates whatever. The Words of the Act are, *No Surrogate deputed by ANY ecclesiastical Judge, who hath Power to grant Licences of Marriage, shall grant any such Licence, before he hath taken an Oath before the said Judge, &c.* This Clause comes after that Proviso, that *Nothing herein before contained shall be construed to extend to deprive the Archbifhop of Canterbury and his Successors, and his and their proper Officers, of the Right which hath hitherto been used—of granting special Licences to marry at any Time and Place.* But it is not said that whatever follows after, shall not be

construed to extend to the Archbishop, nor are his Grace's Officers excepted in the Clause now under View.

However this is cold Comfort, that the Archbishop's Surrogates are on a Level with others, if, as you say, the only Security that any of them give, is one hundred Pounds, against which they may be indemnified by the Persons for whom they have done the Favour, of granting a Licence without the Security of an Oath. You repeat this afterwards, (p. 24.) and complain that *the only Person subject to Felony by this Clause is the Clergyman.* And as you profess to make this Observation on the Bill in general, one should be apt to suppose that there was no other Clause extending the Penalty. And so you go on immediately to add, *the Archbishop's Officers have no Penalty at all. Those of the Bishops and others, who are authorized to grant Licences, are only to lose one hundred Pounds, nor is the Breach of their Oath made Perjury.* The first Remark, I apprehend, is a direct Error in Fact, nor am I at all satisfied of the Validity of the next Assertion, that the only Penalty on the Officers offending in this Case, is the Forfeiture of one hundred Pounds. There is an After-Clause almost in the Conclusion of the Act, which makes any Sort of Concern in the Mismanagement of Licences in the highest Degree penal, and extends the Guilt to all the Parties, whether

whether Clergymen or Laymen, concerned in it.

The Act provides, *that if any Person shall—falsely make, alter, forge, or counterfeit, or cause or procure to be falsely made, altered, forged, or counterfeited, or assist in falsely making, altering, forging, or counterfeiting any such Licence of Marriage as aforesaid; or utter or publish as true—any such false, altered, forged, or counterfeited Licence of Marriage, knowing such—Licence of Marriage to be false, altered, forged, or counterfeited—every Person so offending, and being thereof lawfully convicted, shall be deemed and adjudged to be guilty of Felony, and shall suffer Death as a Felon without Benefit of Clergy.*

Does not the Offence, in the Case supposed, come under the Description of this Clause? Does not the granting a Licence without an Oath, when the same Authority that supports the Licence requires the Oath, make a material Alteration in the same? Is not this falsely making a Licence? or uttering as true that which is known to be falsely made? Was it not the very Intent of this Clause to prevent the *Omission* of any thing necessary to the Authority of Licences, as well as any Alterations and Additions which may be made to them afterwards? This has ever appeared to me to be the Sense of this Part of the Act; if you judge otherwise, yet

yet you will agree with me, that the declaring this expressly to be within the Sense of this Clause, would sufficiently secure this Part, and guard against your Objections in this Article.

I need not remind you that, without this Clause, the Person so offending would in the Ecclesiastical Courts be liable to farther Censures, and severer Penalties than the Forfeiture of his hundred Pound Bond; for you will still say, that this is insufficient; that where a great Fortune is to be obtained, or a powerful Person to be obliged, the Party offending may be indemnified or recompensed for all the Trouble or Expence which his Offence may have brought upon him: I agree with you, and shall therefore join you in earnestly addressing our Superiors that proper Care may be taken in this Case; that Licences should be granted with the utmost Caution, never without the Oath of the Husband, of all Requisites being complied with, and all Impediments avoided, and this Oath recorded, and if proved false, the Offender to suffer as in Cases of Perjury.

I agree yet farther with you, that Persons who are about to enter into the State of Matrimony, have no Cause to be ashamed of their Designs; I think it much more suitable to the Sacredness of the Institution, and the Importance of the Contract, that it should be celebrated in God's House, in the Presence

Presence of their nearest Relations and Friends, and at a Time of Day when the Persons themselves must be supposed to be cool and considerate, and when many others may have an Opportunity of being Witnesses of it, than that it should be performed *privately*, almost by the Parties alone, in a Place not equal to the Dignity or Gravity of it; and at an Hour when Indelicacies may perhaps attend it.

Yet all these Concessions cannot force me to join in, or to approve your State of the Case, or your Language on the Occasion. For since these Articles of *Time* and *Place* are not of the *Essence* of Marriage, but only calculated for the more solemn and orderly Celebration of it, tho' I may wish this Institution so to be performed, as that it may be preserved in the highest Esteem and Reverence, yet when Authority has interposed, and has in some Cases allowed of a *Relaxation* of such external Rules, I cannot pronounce that *Relaxation* criminal; or charge it as a Breach of Conscience in those who make Use of the Indulgence allowed them; if they find it any Way convenient; your following Declamation thereof is a grievous Mistake or Misrepresentation of the Case.

You put these Words, and you put them as unanswerable, in the Mouth of the Church's supposed Enemies. *The Parliament has declared clandestine*

clandestine Marriages to be grievous and criminal ; but the Archbishop's Office is authorized to enable the Crime to be committed with Impunity. Is the Grievance of the Crime less, when done by Authority ? Doth the Crime become innocent because authorized by the Archbishop's Officer ? Clandestine Marriages are either lawful and not criminal, or the Archbishop's Officers should be restrained from authorizing them, as well as others ; and you add soon afterwards in your own Person, Laws ought not to be vague and uncertain ; that which is criminal in one, cannot be innocence in another.

All this kind of Harangue depends, as I before noted, upon the *Ambiguity* of Expressions, and loses all its Force as soon as you put it into plain Words. The Parliament has declared *clandestine Marriages*, that is, such as are contracted by young Persons without the Consent of Parents, and before they are of that Age wherein the Law allows them to chuse for themselves, to be grievous and criminal, and has authorized no Office whatever to confirm such Marriages. But it allows some, who have given sufficient Security as to that Point, and who choose to avoid a publick Method of solemnizing their Marriage, Leave to proceed in a more private Way ; and because of this *Privacy*, tho' Consent of Parents be obtained and certified, yet you will call this Marriage *clandestine*, and then charge your own *imaginary Contradiction* upon

upon the Law itself. In like Manner, the Laws in this Case are not vague and uncertain ; nor is the same Thing criminal in one, which is innocent in another ; but the Laws must decide who shall have Authority to execute such and such Offices ; and he who does the same external Acts *with* Authority which another does *without*, will be entirely justifiable, whilst the other will be justly punishable. Be pleased to try your Argument (if it deserves that Name) upon a Commission of Civil or Military Power, and the Want of such Commission, and let the Instance be that of *Homicide*, and then see whether the Laws are to be called *vague and uncertain*, or chargeable with Inconsistency or Partiality, because in the one Case the Man will be hanged, in the other will be commended for having done his Duty. The Case is parallel. A Man may innocently do that by Virtue of the Archbishop's Licence, who is impowered by the Law to grant it, which he will be criminal and punishable for doing without a Licence authorized by that Power.

But all Things that are *lawful* are not *expedient* ; and therefore since the Advantage of a private Marriage cannot in any Case be very great, and the Advantage of having no private Marriages would be very great, I might very consistently wish that that Power was waved ; though whilst it is continued,

I acknowledge it to be legal, and innocent, and clear of your Charge of Contradiction and Inconsistency.

I will add that tho' this Act has not yet gone so far as you, and I, and others may wish, yet it has given us some additional Security in this Point beyond what we had before. There are some new important Clauses of Force in the Case of the Archbishop's Licence as well as of any other. *All Marriages shall be solemnized in the Presence of two or more credible Witnesses, besides the Minister, who shall celebrate the same; and immediately after the Celebration of every Marriage, an Entry thereof shall be made in the Register; in which Entry or Register it shall be expressed, that the said Marriage was celebrated by Banns or Licence; and if both or either of the Parties married by Licence, be under Age, with Consent of the Parents or Guardians, as the Case shall be, and shall be signed by the Minister with his proper Addition, and also by the Parties married, and attested by such two Witnesses.. These are wise Precautions towards securing the Propriety of Marriages, and the After-Evidence of them; and a peculiar Licence for any Time and Place of Marriage does not exempt the Parties from observing these Forms and Circumstances, though it excuses their Attendance in a Place of publick Worship, for the Solemnization of their Marriage.*

But

But the principal Advantage gained herein by this Act, is, that the Archbishop's Licence, so far from confirming, as you charge, those clandestine Marriages, which this Bill was intended to prevent, does now presuppose and indispensably require the preceding Consent of Parents, and is still absolutely invalid, if that has not been obtained, so that no real Marriage is hereby contracted, though the Form has been observed in Virtue of that peculiar Licence. *All Marriages solemnized by Licence, where either of the Parties shall be under the Age of twenty one Years, which shall be had without the Consent of the Father of such of the Parties, so under Age, — shall be absolutely null and void to all Intentions and Purposes whatsoever.* Here the Archbishop's Licence is not excepted, but an Attempt to gain what is truly deemed a clandestine Marriage, will be as effectually defeated in that Method as in any other.

But this very Circumstance, which is a valid Answer to one Objection, is itself improved into another. And here you lose your former Temper and Stile, and the Loss of them has, as it usually happens, proved to the Disadvantage of your Cause, and Warmth supplies the Place of Argument.

You thus express yourself. *But the Minister is not the only Person to be punished; the Parties*

are to have their Share; every such Marriage is declared to be void; by this the Sin of the Parents will be visited upon the Children to the latest Poverty—I must own this Provision seems to me the most exceptionable of any in the Act; the Operation of it may have the most dreadful Consequences.—Our Saviour has expressly declared,—*Those whom God hath joined together, let no Man put asunder,* except in the Case of Adultery. How can this Law then be valid? Doth it not repeal the Divine Law, which no Power on Earth can alter? The Laws of God and Nature have instituted Matrimony;—and Man hath taken upon him to declare the Laws of God and Nature void. This is an Assertion; but is nothing more. For wherein, I beseech you, hath Man taken upon him to declare the Laws of God and Nature void? The Act before us, on which you mean to cast the Imputation, has done nothing like it. This proceeds upon the Supposition that Marriage is of divine Appointment, and it was intended to guard more carefully this sacred Institution. The only Attempt which you make towards the Appearance of an Argument is, that our Saviour has expressly declared, *Those whom God hath joined together, let no Man put asunder.* This is readily admitted by the Compilers of this Act, and the Advocates for it; and the proper Reply is, that God has not joined those together, who met together on any other Terms than those of the Laws of the Land where they lived. The Will of God expressly revealed is, that

that we should submit to every *Ordinance of Men for the Lord's Sake*; and the Form of contracting Matrimony is one of those things which must be thought left to the Determination of human Authority in each respective Country. Those who are joined together by such established Form, are validly married, whilst those who despise or neglect that Form, are guilty of Disobedience to God and Man, and live in a sinful Commerce with each other; instead of being so nearly related together in the lawful and Honourable State of Matrimony. *For*, as the Office in our Liturgy expresses it, *Be ye well assured that so many as are coupled together otherwise than God's Word doth allow, are not joined together by God, neither is their Matrimony lawful.*

This is the true State of the Case. God's Word doth not allow that any should be reputed Man and Wife, or should live together as such, who have not declared their mutual Engagement, and promised their mutual Fidelity to each other, in the publick Manner required by the Laws of the Country where they live; and therefore if, omitting this, they live together as if they had been so married, yet they are not joined together by God, neither is their Marriage lawful. You will not presume to say, because you cannot pretend to prove, that God has fixed one universal unalterable Rule for constituting or deciding what is Marriage. If you do, I shall immediately call upon

you to know what is the indissoluble Form, and where you find it. Neither will you say that Cohabitation alone makes a Marriage. For this whilst it would extremely extend the Sin of Adultery, would abolish the Notion of Fornication, would confound the Nature of the Crimes, and create insuperable Difficulties in Society. There must be then open Form or Ceremony used in this Case. And as this is not enjoined in the Scriptures, we must come at last to the Laws of the Land to determine what is honourable Marriage, and must make the Observance of them the Rule of Conscience in this Case.

You will, I believe, agree with me, that those who use no Ceremony of this Kind, but live together without it, are guilty of criminal Conversation, and might be separated without Repugnance to any Law of God. But why? Why, because not having the Sanction of human Authority, they have no Pretence of any Claim to divine Authority for living together as Man and Wife, but having never been joined together by God, may be put asunder, without any Disobedience to him or his Laws.

Well then, if it be the Expression of the mutual Consent and Contract of the Parties the *legal* Form only that constitutes the Marriage, if the Omission of it would, by your own Confession, render the Contract dishonourable, and the Commerce criminal, then, if the Ceremony

be

be not observed in the Manner prescribed by the Law, this is in Reality no legal Ceremony, and the Effect is just the same as if no Ceremony had been observed at all. The Law declares that no Ceremony shall constitute Marriage, but such as is celebrated in such and such a Form, and whether you observe *no* Form at all, or a *different* one from that which is prescribed, it is just the same thing with Respect to the Law, and of Course with Respect to Conscience. You are in both Cases disobedient to the Law of Man, and in Consequence to the Law of God, and have no Pretence to say, that ye were ever joined together by God, or under that Plea to assert the Indissolubleness of your Marriage.

I have sometimes thought that all the Confusion and Uneasiness which have arisen upon this Subject, and the Outcries which have been made about contradicting and repealing the Law of God in this Case, have been owing merely to a doubtful Expression, and the Ambiguity of the Terms which you and others have used about *annulling Marriages*. This sounds shocking. It seems to suppose that those Contracts were once real Marriages, and were afterwards dissolved and undone ; and from hence you plead as if human Authority had set aside Divine ; and that when God had declared the Ties of Matrimony indissoluble, Men should presume to declare the contrary. Whereas this is more than the Phrase used in the Act can be strained

strained to signify, and directly contrary to what the plain Sense of it amounts to. The Words are, *All Marriages solemnized otherwise than this Act directs, shall be absolutely null and void to all Intents and Purposes whatsoever.* That is, they shall be no Marriages, but unlawful Engagements, as void as if no Ceremony at all had been observed. They are absolutely contrary to the Law of Man, and therefore as contrary to the Law of God, who has given the governing Powers of every Country the Right of settling the Ceremonial of Marriage, and of prescribing the Form in which alone this honourable Engagement shall be contracted.

You proceed to quote Dr. Taylor as censuring the Council of Trent for declaring all clandestine Marriages null and void. *They have, he says, over-assed their Zeal against a temporal Inconvenience, and burnt their House to roast an Egg. They destroy a Law of Nature by a Law of the Church, against the former Practices, Councils and Resolutions of their own Church. For if their Contracts are in themselves naturally valid, they cannot rescind them.*

Dr. Taylor in his voluminous Writings said many lively Things which will not bear a strict Examination; and we do not live in an Age when any Man's Name will avail farther than his Reasonings are satisfactory. Or if Authority was to determine this Point, it would be easy to produce as great Names on the other Side of the

the Question. As good a Bishop, and as able a Casuist, referring to this very Article so severely censured by Dr. *Taylor*, uses this remarkable Commendation of it. " In this Point we may well give the Church of *Rome* her Due, and acknowledge the wise Care of her Late-ran and Tridentine Councils, which have enacted so strict Decrees against clandestine Marriages, and have taken so severe a Course for the reforming of many foul Disorders in these matrimonial Proceedings, as may be of good Use for the Christian World. Had they done the like in other Cases, their Light had not gone out in a Snuff." (*Hall's Cases of Conscience*, p. 363.) *Martin Bucer*, when he wrote a Book, *concerning the Kingdom of Christ*, as a Present for King *Edward VI.* to press him to a farther Reformation, yet thought the Reformation in Practice in this Point ought to be regulated by the Determination of the Council of *Trent*; for he particularly pressed that Marriage without Consent of Parents should be annulled. (*Burnet's History of the Reformation*, Vol. II. p. 156.) And when in the Reign of the said King *Edward VI.* thirty two Persons, namely, eight Bishops, eight Divines, eight Civilians, and eight common Lawyers, were empowered to review and reform the Ecclesiastical Laws, this was one Article agreed upon by them, that Marriages made without Consent of Parents should be declared null. (p. 198.) But to return to Dr. *Taylor*, There are several Errors

in this short Paragraph which would require a much longer to state and explain it. When he called clandestine Marriages only a *temporal Inconveniencē*, he did not speak of them with sufficient Severity; for you and I have before agreed that Adultery, Bigamy, Incest, and the Destruction of many reputable Families daily arise from them. When he spoke of Matrimony as the Law of Nature, he should have distinguished between the Institution itself, and the Form of celebrating it. The Council of *Trent* neither did, nor attempted to destroy the former by better regulating the latter, but intended, as our Parliament did, to secure and establish the Honour of Matrimony by suffering nothing to be esteemed as such, but what was publickly celebrated according to the Laws and Constitutions of each respective Kingdom. And when he talked of the Impossibility of rescinding Contracts in themselves naturally valid, he was very wide of the State of the Case with respect to the Form of celebrating Marriages. The Promise of mutual and perpetual Fidelity and Constancy between the Parties themselves, which was the only Part of the Contract naturally valid, was just the same as before, and continued equally binding on Conscience. It was only declared hereby, that this Promise was testified in an unlawful and dishonourable Manner, by omitting or contradicting the publick Form of Espousals established by national Authority. The Parties were still at Liberty

to

to confirm their former Engagement in an honourable Method, and with Respect to their Promises to each other, were in Conscience bound to do it, though their Pretence of Marriage already celebrated was hereby declared void, as being clandestine and illegal : So that nothing was hereby rescinded, which was ever valid ; but a publick Solemnization of Marriage was declared necessary to the Validity of it. The Case of the late Act is the same, and this Representation of it is a sufficient Answer to what you have hinted in one Place concerning the Clause which sets aside former Engagements, as well as to that which you have more expressly objected to. the Clause which declares all clandestine Marriages void.

You proceed to consider the Consequences attending the *annulling of Marriages*, as you call it. *It is, you say, a Punishment of innocent Children :—They are hereby made illegitimate, debarred the Right of Inheritance, and the Scandal perpetuated to the last Generation.*

And is not this Objection equally applicable to every other Instance of Illegitimacy ? In that Case, innocent Children suffer Shame and Loss, for the Fault of those from whom they derive their Being, and forfeit those Honours and Possessions which they would have enjoyed, if their Parents had been honourably married. And what then ? Would you therefore have an

Act to abolish the Name and Notion of Bastardy, and to set all Children on a Level, whether legitimate or illegitimate, lest the Innocent should suffer by Means of the Guilty? If Persons will live together without a just Warrant from the Laws of God and Man, they know the Consequence. If they have Children, those Children are born under a Note of Infamy, and are not legally entitled to their Inheritance. This was a wise Provision, intended to move Men to Regularity and Virtue by that natural Love which every one naturally bears to his own Offspring; and the like Provision is made in many other Cases without any Imputation of Injustice. Is not Obedience to Government guarded by the like Security, and has it not happy Effects towards the publick Tranquillity? Would it not be as plausible an Objection in the Case of *Treason* as in any other, that it is unjust that the Children should suffer for the Conspiracies of the Father; since here, apparently innocent Infants are severely punished by the Forfeiture of Honours and Possessions for the Offences of their Parents. Yet this is a very beneficial Clause, for many, who would venture their own Persons and Fortunes in treasonable Conspiracies, may be supposed to be restrained from doing it by a Regard to their Families. They are moved, as it was foreseen that they would, and intended that they should be, by their Tenderness for their Children, their Desire for their Support and Welfare; and thus the Publick Peace and the
Comfort

Comfort of their private Families are at the same Time secured by this wise Provision of involving the Children in the Ruin of their Parents, if the Parents should offend.

But you seem to think such a Provision unjust in all Cases. *The Penalty, you say, is contrary to the Laws of God, and the Innocent are liable to suffer, which is very unreasonable.* I answer, Parents are supposed to suffer by the Ruin and Calamities of their Children, especially if they are instrumental in bringing them upon them, and therefore this Consequence is intended directly as a Punishment on the Offenders themselves; To them it is truly *judicial*; on the Children, supposed innocent, it falls like any other Misfortune; and you cannot say that it is contrary to the Laws of God, or the Dispensations of Providence, that through the Means of wicked Mens Misbehaviour, others should sometimes be involved in Calamities. The Innocent are liable to suffer in many Cases by the Iniquities of the Guilty, and more particularly Children are so by the Misconduct of Parents; and this is so far from being unreasonable, that it cannot be otherwise but by a miraculous Interposition. If we believe God to be the Author of Nature, and the Institutor of Society, then we see that it is his Will that Parents should be influenced to good Conduct by a Regard to the Welfare of their Offspring; for such is the Course of Nature, and the State of Society, that without

any particular Law, Children in many Cases must and will suffer by the Vices of those from whom they spring. If a Man ruins his Constitution by Irregularity, or wastes his Fortune by Extravagance, his Offspring will in both Respects feel the ill Effects of his ill Conduct; and I am sure you will not say that it is unreasonable that they should do so. The Children, if they are good, may make a good Use of their Misfortunes; but their Afflictions are supposed to be Matter of Grief to their Parents. The Design of this is to deter these from evil Courses by the Apprehension of bringing Evil on the Fruit of their own Loins. Thus they are forewarned against the Crime of clandestine Marriages, contrary to the Laws of Man, and therefore contrary to the Laws of God, by this Assurance, that such Contracts shall be deemed no Marriages; that their After-Cohabitation is criminal, the Children arising from it illegitimate, incapable of inheriting their Honours and Fortunes. This was the only Method to render this Law effectual, and seems to me to be as reasonably applied in this Instance, as in any other, against living in a State of Fornication.

You next state a Case, wherein at first View there seems to be some Ground for Objection: You say, *A Woman is supposed not to be skilled in the Laws of the Kingdom; nor doth she know, whether the Licence for her Marriage is good, or not. She may be persuaded she is married by a Licence*

Licence from the Archibishop, and in Consequence of such Marriage may have cohabited with her Husband many years, and become the Mother of many Children. Should a Difference after all this happen between the Husband and Wife, the Husband will have it in his Power to annul his Marriage, and illegitimate his Children. Will not this be a dreadful Consequence? Or suppose such a Licence should be forged by the Husband, which may be the Case, the Wife and Children will be equally liable to be imposed on and to suffer by the Consequence.

The Danger which you represent the Wife and Children as hereby subject to, is pretty well prevented by the Severity of the Penalty provided for the Husband in this Case, which is no less than capital. Will any Man, do you think, endeavour to impose upon a Woman in this Case, with a View of separating from her afterwards, when as soon as he is pleased to make the Discovery that the Licence was forged, he himself will be sure to be hanged for his Pains? The Necessity of making a proper Example in such a Case being so evident, and the Security and Welfare of Society depending upon it, it is scarce possible for us to suppose that such an Offender could ever think of finding any Resource from Favour for remitting the utmost Strictness of his Sentence, and that the Punishment must not prove the inevitable Consequence of the Conviction.

Had

Had you after so critical a Review and Examination of the A&t, really forgot the Clause which makes it *Felony without Benefit of Clergy* to *forge or alter a Licence, or to assist in doing it, or to utter or publish it when done*; or did you knowingly sink this material Circumstance, when you drew up this pathetical Paragraph, and were pleading so warinly the Hazards to which the Family was liable in such a Case?

I may ask the same Question with still greater Force, on Account of another Paragraph in your Considerations, where you say *the Man who is married, who is well informed of every Circumstance, knows every Impediment, imposes on the Minister, brings the false Licence, or false Certificate, is not at all taken Notice of, only to bind his Marriage, which if it was for the Sake of his Wife's Fortune (or to gratify a vicious Inclination) which vests in him by the Ceremony, and he takes Care to dispose of as soon as he has it; so far from Punishment, that perhaps he has his Inclinations answered, he gets rid of his Wife, and is at Liberty to play the same Game again upon the first Opportunity*—Can any Man read this without Concern? And I say, Can any Man read this without Surprize, who has read the A&t quite through, and has been therein told, that *a Man shall suffer Death as a Felon without Benefit of Clergy for the first Offence of making or uttering any false Licence?*

But the Woman has not only this Security from the greater Hazard that the intended Husband himself runs in attempting to forge a Licence, but the additional one from the Knowledge and Care of the Minister who is to perform the Ceremony. Though she is supposed not so to be skilled in the Laws of the Kingdom, nor to know, whether the Licence for her Marriage is good, or not, yet the Clergyman is supposed to know it, and his Life likewise is at Stake, and depends on his acting to the best of his Knowledge in this Case. If he makes Use of a Licence which he knows to be forged or altered, he shall likewise suffer Death as a Felon without Benefit of Clergy. So that the Husband and the Minister are both more interested than even the Woman in the Genuineness of the Licence by which the Marriage is performed. She cannot be imposed upon but by their concurring to impose upon her. They must both run the Hazard of their Lives in attempting to do it; and thus she has absolutely more Security as to the Validity of her Marriage than any other Thing that she enjoys in Life.

Your next Exception is to the Power reserved to the Court of Chancery to grant a legal and valid Consent to the Celebration of a Marriage, if the Mother or Guardians should abuse the Trust reposed in them, and be influenced by undue Motives to refuse or withhold their Consent to proper Marriage; for these are the Words,

Words, and this the Intent of the Act. It was certainly highly proper to make some Provision for such a Case ; but your Objection, if it deserves the Name, will render all such Provision impracticable. You say, *the Persons intrusted with this Power, ought to be almost divested of human Frailty.* Where then shall we look for them ? Or must we sit still, and make no Attempt to provide a Remedy against so plain and great an Evil, because we cannot find an infallible and impeccable Person to lodge the Power in ? Was it not becoming the Wisdom of the Senate, to consider who was most likely to judge best, and act most uprightly in the supposed Case ? And what Objection can be made against the great Officer to whom they have reserved this Power ? I need not lay Stress on the unexceptionable Abilities and Integrity of the Person who now fills that great high Office. He may not live long, or may not long continue in that Post, and his Equal may not be found to fill it. But though his Successors should not be blessed with his superior Endowments, the Question still is, whether they are not more likely to discern clearly, and act fairly, in the supposed Case of Doubt, than those who may have Resentments to gratify, or Interests to promote by with-holding their Consent to a proper Proposal of Marriage. You do not attempt any thing to determine this Question, unless the Mention of the Misbehaviour of a late Lord Chancellor can be thought to this Purpose. Not to insist on his Plea of Perqui-

Perquisites that he had obtained by *Custom*, however wrong; not to observe that the Cases of his supposed Misconduct were by no Means parallel to that under View, yet if one Lord Chancellor acted very blameably, is that a Reason why the Power under Consideration should not be entrusted to his Successor? Or if one Offender in that high Station can be produced, may not ten thousand Instances of wicked Guardians be assigned in lower Life? What then? Must Children under Age be therefore left to dispose of their Persons and Fortunes, as they themselves please, lest the Persons to whom they are entrusted, should *possibly* prove faulty and corrupt? Or is it not an Act of Prudence to place them under those, who are most likely to act fairly and impartially by them?

Here then we return to the Question, whether in the Case of Marriage of Orphans, the final Power of Consent, if Doubts and Difficulties arise, be not more properly placed in the Lord Chancellor than in any other Person, and whether he be not *ordinarily* under much less Temptation to judge or act partially in this Case, than any of the others to whom the Children are entrusted.

Upon this Principle the Power is reserved entire and final to the Father, if living, because he cannot well be supposed to have any Interest in opposing the Marriage of his Child, if it be

a proper one. The Mother, tho' continuing unmarried, may be influenced by other Persons, and may in Case of a considerable Fortune, find Means, by refusing her Consent, to force the Child to buy it, in order perhaps to buy herself another Husband. Guardians, if their Circumstances were distressed, if their Principles were not good, and if their Authority was final, might extort Money from their Wards in like Manner, and oblige them to pay for a Marriage, to which no reasonable Objection could be made.

These are not imaginary Suppositions, but are Facts that fall under every Day's Observation. The Abuse of the Power of Guardians is a frequent Subject of Complaint, and you, and I, and every one, could specify many Instances of it. It is reasonable then that in the most important of all Instances, there should be an Appeal beyond them, that they may not have it in their Power to set a Price upon their Consent in Cases where it would be unreasonable to refuse it. And what Person would you fix on for this necessary Office? Do not make such an Objection as arises only from the Constitution of our Nature, and the Want of absolute Perfection, and then you cannot make any against the Appointment as settled by this Act. The Person who fills that Office at any Time, will undoubtedly be able to judge upon the Reasonableness of the Marriage proposed, and will lie under

tinder no sinister Influence to bias his Judgment, or pervert his Determination.

But he *may* be bribed, you will say, for his Consent, and you might say this of any one living that was appointed for this Purpose. But the Possibility of this would be more remote than in any other Person, and all the Degrees of Probability lie against it. The Danger of attempting it would be great; there would be no Prospect of succeeding in it; and I cannot in Earnest believe that any one in his Senses, who thought himself aggrieved by the Refusal of his Guardians, and in Consequence of it made his Appeal to the Lord Chancellor, would either by himself, or his Agents, set about the Scheme of corrupting his Lordship, in order to obtain a favourable Decision. If this is not in common Reason to be supposed, what other Danger can you apprehend? Why, you say that the greatest Part of the Orphans of this Kingdom may be Objects of this Provision, and their Persons and Fortunes, against the Consent of their Parents and Guardians, be disposed of by this great Officer.

This is supposing that the greater Part of the Mothers and Guardians of those Orphans may be induced unreasonably, and by undue Motives, to abuse the Trust reposed in them, by refusing their Consent to a proper Marriage. And if this should be the Case, will it not be happy that there is such a farther Provision against their arbitrary

Power, and their Abuse of it ? But I suppose on the contrary, that Appeals of this Sort will be very few ; that the Apprehension of the Chancellor's Interposition will make Mothers and Guardians more cautious and candid in the Use of this Part of their Power ; and that the Cases must be very flagrant, where the young Persons can apply, with any Prospect of Success, to the Lord Chancellor for Relief against the Refusal of their Mothers and Guardians. Time and Experience must shew which of us are most right in our different Suppositions ; and I am fully persuaded that the same Experience will shew the Benefit of this Provision, and that the right Use of this Power lodged in the Chancellor will best recommend it.

You say, it seems to be a Power of great Extent, and may it not be thought little less than a Revival of one Part of the Jurisdiction of the Court of Wards and Liveries. From a Member of the Temple I should not have expected this Remark, who should have been acquainted with the Power of that Court in former Times, and the exceeding great Difference between the present Case, and that other referred to. If this Act had provided that no Orphan under Age should be married without the Consent of the Lord Chancellor, then there had been some Room for your Insinuation and Parallel. But the Consent of the Mother or Guardians is sufficient for the Marriage of the most wealthy Orphan,

Orphan, without the Interposition of the Court of Chancery. An Appeal thither is permitted only in Case those in Trust are thought to withhold their Consent to a reasonable and proper Marriage. If they should be really guilty of this Charge, you must own it an Advantage that there is this Remedy against them; and you have not offered, nor can offer, any Appearance of an Argument, why the Lord Chancellor is not as competent and impartial a Judge of the Case as any other.

After having offered these Objections to the present State of the Act, you proceed to *offer to the Publick a short Sketch of a Bill to cure this Evil, and effectually answer every End that can reasonably be desired.*

The first Clauses of the present Bill, and the two first Provisos which follow it, you would make the Foundation of the Act—And the Person who should marry any Persons otherwise than therein prescribed, should forfeit and lose (upon due Conviction) all his Ecclesiastical Preferment, and be incapable of taking and holding any other such Preferment for ever then after.

I am glad we can agree so far as to approve of the first Clauses of the present Bill with the two first Provisos : but I cannot admit of your following Alterations and intended Amendments. You are first for changing the Trans-

portion of the offending Minister into an Incapacity for Ecclesiastical Preferment. But this will not be effectual to the Purpose intended. Suppose a poor Clergyman has no Preferment, nor Prospect of any. He is tempted by a considerable present Sum to be concerned in a clandestine Marriage, and to join the Parties together in the Form appointed, but without Banns or Licence. Where is your Security in the Case? There is no Penalty provided by you for the Offender to deter him from the Practice. The poor Man has lost no Possession or Expectation that he ever had, and has perhaps obtained a Sum which he never expected. The Parties are actually, and upon your Scheme, indissolubly married, and thus the Intent of the Act to prevent clandestine Marriages is effectually defeated. You have removed what is intended to prevent them, viz. the Hazards attending both the officiating Minister, and the Parties themselves, and have placed nothing sufficient in the Room of them. The Clergyman, in the Case supposed, escapes absolutely and goes on with Impunity and without Fear by the Benefit of your proposed Alteration; whereas the Terror of Transportation would have reached even *him*, and he might have been as unwilling as others, to leave his native Country, and Friends, and other Interests, and to be transported as a Felon and Slave, though he might have no Ecclesiastical Preferment to be deprived of.

But

But I will next suppose the Case of a *beneficed* Clergyman ; and here I shall not only object that the Penalty of Deprivation is less severe, and therefore less likely to be effectual than Transportation, but I shall retort one of your own Objections upon you, and say that it is the less proper, as punishing the Innocent more immediately than the Guilty. A Woman, for Instance, marries a Clergyman, because he has such Preferment as will afford a decent Provision for herself and Children. He offends against this Act, and as the Bill now stands, is truly the greatest Sufferer by it, subjecting himself thereby to a miserable Servitude in a foreign Country for fourteen years. But his Preferment is not thereby voided, nor his Family totally ~~abandoned~~; their Maintenance continues in the chief Part the same, and they have only his Absence and Sufferings to lament. This Penalty seems in this Case much more reasonable than the other ; though I am far from saying that an Act for depriving him, would have been in itself iniquitous, if it had passed, as punishing the Innocent instead of the Guilty, and therefore contrary to the Law of God. This was your Sentiment and Language, and may serve to shew how inconsistent this, your first proposed Alteration is with your own Doctrine,

Your

Your second intended Amendment is, instead of declaring the illegal Pretence of Marriage void; to transport the Husband, and to starve both him and his Wife, as you call them; that is, if I rightly understand you: for you say, *nor shall be, nor his wife be entitled to have, or take any real or personal Estate, by Virtue of such Marriage; but such real and personal Estate, from the Time of such Marriage, shall be vested in Trustees, to the Use of such Child or Children as shall be the Product of such Marriage; and in Case there shall be no such Child or Children, then to the Use of such Person or Persons as by Law, for Want of such Child or Children, should be entitled thereto.* Do you not mean that both the Man and Woman should forfeit what each of them had before? I think your Scheme implies it, and your Words express it, by your appointing Trustees to take Care of their Fortune for their Children, or nearest Relations. Yet your saying they shall not take or have, any real or personal Estate *by Virtue of such Marriage*, leaves a Doubt. May each one have what they had before by their own Right? If this were permitted, they might, 'by a good Agreement between each other, prevent any Penalty of this Kind; but this cannot be your Meaning, because these same real and personal Estates (whether belonging before to the Man, or Woman, or both, you do not say) are to be vested immediately in Trustees. But who are to be the

the Trustees, and who is to appoint them ? If the Parties themselves, there will be some Collusion in the Case, and they may contrive to enjoy the Benefit of their own Fortunes. If the nearest Relations of Course are to be entrusted, they may often be very improper Persons, and may sometimes wink at a clandestine Marriage which they foresee, and by which they are to be so great Gainers. If the Court of Chancery, you will be apprehensive of throwing too much Power into that Court.

But what is to become of the poor Woman in this Case ? I suppose you intend she shall march off with her Husband, because you are taking Care to provide for her Children, if she has any. But this she may not choose, and whether she goes or stays, you have left her penniless and entirely unprovided for. Now I will suppose with much greater Probability than you did in the former Case, that she has been imposed upon in this Affair ; that she knew nothing of the false Licence, or forged Certificate of Banns by which she has been married. Here your own Objection returns again with much greater Force. I answered it, as the Bill now stands, from the Security that she has, that her Husband and the Clergyman will not both venture their Necks merely to ensnare her. But you cannot make this Reply to me upon your own Scheme of Alterations and Amendment. I have found you a Clergyman in the Case just

supposed, who will run no Hazard in marrying her, and I will account for the Husband's Conduct now. I will suppose that the Woman has the superior Fortune, and that it consists of personal Estate: that the Man who fears a Jail for Debt, or perhaps Transportation for other Crimes, and who has no Chance of obtaining the Woman in any regular Method, forges a Licence or Certificate for Banns, and marries her; endeavours by all Means to conceal the Forgery till he can get Possession of her Fortune, and then, foreseeing a Discovery, goes abroad immediately with her whole Substance, leaving her without any Thing to support her; yet indissolubly married upon your Scheme, and not at Liberty to provide for herself again, even by matching at any Time to Advantage. Here your innocent Person suffers most extremely, and is ruined most effectually by the Fault of another, and is left not only under Distress of Circumstances; but under particular Temptations by the unavoidable Absence of her wicked Husband. *You are afraid that this Act, as it now stands, will be the Occasion of the Sin of Fornication, and I have much more Reason to be afraid that your proposed Amendment will be more often the Occasion of the Sin of Adultery.*

Some other Difficulties and Distresses might be mentioned upon Supposition that the Woman concurred with the Man, and was ready to follow him and his Fortunes. An Heiress is stolen

and married without Consent of Parents or Guardians. The Fraud is immediately discovered, and the Money secured, but the Man is transported, and she, as a dutiful Wife, chooses to follow him. The Trustees, whoever they are, enter upon the Fortune, to be kept they know not how long, or for whom. The new married Couple are transported, and may never be heard of more; they may have Children, or they may not; they may find a spurious Heir, and send him over on Purpose to defeat the Expectations of the nearest Relations; or they may have a real Child, who may lose the Inheritance you was so careful to secure for him, for Want of Evidence, at that Distance, to prove the Genuineness of his Birth. The Parties in the mean Time have nothing to support them in a foreign Country, and the Parents, &c. are breaking their Hearts for them at Home. The Children, if such there are, may perish for Want, tho' entitled in Reversion to a good Fortune; and the Trustees cannot answer remitting them some Part of their Expectances to provide for their Support and Education; nor, if they could, would it probably, in such a Situation, be applied to those Purposes.

And what are all these Perplexities and Intricacies introduced for? only because you will not allow the Law of the Land to declare what shall be deemed a valid Marriage, or not. Pronounce by Authority these *clandestine Contracts*

absolutely void, and you cut off at once the Temptation to them : whereas if they must be accounted indissoluble, Affairs may somehow or other be accommodated afterwards, and the Hope of this will induce Men to attempt it. Upon the whole, I conceive that the Act, as it stands at present, is much less liable to Objection in itself, and much more likely to answer the main Purpose, than it would be after your proposed Alterations and Amendments.

But you are afraid it will be the Occasion of the Sin of Fornication. I would guard as carefully as any one against that Consequence, but see not the least Reason to apprehend it from this Bill. You put an imaginary Case of many Persons being refused, after doing all in their Power, to be lawfully married ; and then you fear, *Nature would over-power their virtuous Inclinations* ; but the Answer is, there is no Danger of such Persons meeting with a Refusal in Pursuit of a proper and honourable Scheme of Marriage. The common People were indeed alarmed at first, with the great Difficulties which they should meet with for the future in being married, but they have found by Experience their Apprehensions to be groundless, and that every regular and right Marriage goes on with as much Ease as before. Nor were there any Grounds for their Apprehensions, nor for your Objection of driving Men of virtuous Inclinations to Fornication, by denying them the Opportunity of Marriage.

You

You say afterwards, you hope the Clergy will not raise Difficulties where there are none, but you have here raised them for them in a most extraordinary Degree and Manner. You say the Difficulties, Doubts, and Uncertainties the Minister may be under, who is to perform this Rite, added to the Penalty he is made liable to, will no Doubt make him cautious; and in many Cases, if his Scruples should incline him, to refuse to do his Office—you add, there seems to me to be only one Case where the Minister will be entirely free from Doubts; which is, where both the Parties are known to him, and live in his own Parish. For the Certificate of Bans may be forged; they may have never been asked; the Licence may be the same; and in both these Cases the Minister will be guilty of Felony—It may also happen that the Licence may by other Means be illegal; there may be Disputes between the ordinary and peculiar Jurisdictions, who both the Power of granting Licences; and if upon Trial it shall be found the Licence was granted by a wrong Person, the Minister, who marries thereby, will be guilty of Felony.

Is not this raising Difficulties, where there are none, in a very singular Instance, contrary both to the Letter and Intent of the Act? And is it not a Misrepresentation of very ill Consequence, tending to fright the Clergy from the Discharge of their Office; and of Course tending to drive others to that very Immorality, which

which you made the Foundation of your Objection?

I will answer in the first Place, that that is not the only Case, which excludes all Doubts, *where both the Parties are known to the Minister, and live in his own Parish.* If the Minister is himself a Surrogate, and receives the Licences from the Ecclesiastical Judge by whom he is deputed, he runs no Hazard of their being forged; but acts altogether as securely by marrying a Couple to whom himself had granted the Licence, where one of the Parties lives in his Parish, and is known to him, as if both had resided there, and been married by Banns. And therefore this is a Reason why I think more of the Clergy should desire to be Surrogates, and should be admitted as such, that they may proceed the more safely, and may keep their Security in their own Hands.

But suppose they marry by Banns, which were publickly bid in their own Church, where one of the Parties lived, and a forged Certificate is brought from the other Parish; or suppose a Licence is brought in Appearance genuine, but afterwards found to be counterfeited; or suppose a real Licence is granted by a Person presumed to have Authority in a particular Precinct, when, upon a Trial at Law, another Person claiming that Authority is afterwards proved to have the just Right to it; in all these supposed

posed Cases you say that the Minister, who acts by these Certificates and Licences, will be guilty of Felony ; and could you have proved it as plainly as you have fully asserted it, you would indeed have greatly discouraged the Clergy, thrown many Bars in the Way of Matrimony, and have occasioned those consequent Immoralities which you was so apprehensive of. But the Case is so plainly otherwise, that you could not express it in the proper Words without disproving yourself, and shewing the Misrepresentation and Weakness of your Objection. You could not say that a Clergyman who in either of the fore-mentioned Cases, *makes a Mistake*, is guilty of Felony, because the Words of the Act were clear and express against such an Assertion, and do justify or indemnify at least, the Clergyman who was imposed upon in any such Case, and did not himself *knowingly and wilfully* offend in his Part of the Transaction.

You take Notice however of this Clause in his Favour, and endeavour to distinguish it away. You say, *Can be prove positively he did not know; every one knows it to be impossible to prove a Negative.* This again is playing with Words. I will convert it into an *Affirmative* then, and prove positively that I was imposed upon in the Case. I will produce the forged Certificate, and prove the Delivery of it to me. I will exhibit the counterfeited Licence, with the like Evidence of my receiving it from the Person to be

be married; and as to disputed Jurisdiction, the ensuing Trial at Law about that Jurisdiction will prove that I did not *knowingly and wilfully offend*, tho' I should be found to have been under an Error of Judgment. Can any Thing be more clear than the proper Method of proceeding in such a Case? or any Event more certain than that I should be acquitted from the Charge of offending *knowingly and wilfully* in either of the forementioned Cases?

You say *knowingly may depend on Circumstances which may often differ*; and tho' they may be Proof of the Scienter in one Case, they may not be in another. These Circumstances may satisfy many Persons of the Guilt of a Person, when he may be entirely innocent in his own and other Persons Opinions. These are general Remarks no way applicable to the particular Case before us. I produce my Authorities, as above stated, and am justified by them, and my Defence does not admit of Doubts or any Variety of Judgment upon it.

You add, *Wilfully in this Case may be proved more easily; no Clergyman is obliged to marry by Licence; he may choose whether he will or not; and if he doth it, he must do it wilfully—and yet may be innocent within the Intent of this Act.* He may so. He may use a Licence wilfully, that is, he may be willing to marry a Couple by that Form, but not use it wilfully as counterfeited, but

but as believing it to be of good Authority, and is excused by his Mistake, if it prove otherwise. He not only *may be* but *is* innocent in this Case by the Intent of this Act, and therefore your Observation about his Act's being *wilful* in a quite different Sense, is of no Weight and to no Purpose.

But, you say, supposing these Words may be sufficient to acquit a Clergyman upon a Trial, will he not be a Sufferer? — what Amends will be have for the Imprisonment, for the Scandal, for the Expenses he has suffered? None, but the Satisfaction and Credit of being honourably acquitted: but will not this Objection hold as strongly against every other Law of the Land as against this? If People should swear falsely against you or me in any other Instance of Felony, what Remedy should we have, or what Recompence for our Sufferings? But would you therefore have no Law against such Crimes, because wicked Men may by Perjury bring innocent Persons into Troubles and Difficulties by false Charges of such Crimes against them?

There is a famous Case in the State-Trials, of a Clergyman in particular, who by a Combination of Conspirators was charged with robbing the House of one of his Parishioners. The Goods alledged to have been stolen were secretly conveyed into his House and openly found there. The *Parson* was committed to Jail, and

lay there many Months. Upon his Trial the Conspiracy was happily detected, and he honourably acquitted; and when he begged in Court for an immediate Release, declaring his Poverty and Inability to pay even the Fees of the Prison, the Judge lamented his Case, but declared it was not in his Power to give away the Jailor's legal Fees, and he must return to Prison again till he could raise Money to discharge the Keeper's Demands. The Case was hard; but would you therefore have the Laws against Felony and Burglary repealed, lest another Clergyman should be falsely accused, and brought into the like Difficulties? An Objection which would hold equally against *all* Laws, is of no Force against *any*; for wicked Men may, by Malice and false Testimony, pervert the best Laws that ever were made, to the Ruin of particular innocent Persons.

After all, I apprehend, you are mistaken in the Danger that you represent an innocent Clergyman to be in merely for an Information. *The Justice of the Peace, you say, can't try the Fact — be must send him to Prison, where he must continue till he is tried. He is not bailable.* I am not enough skilled in the Law to pronounce peremptorily in this Case; but I am fully satisfied that a Justice of Peace will not receive an Information upon Oath from any Man against any Man, not from a Person of known ill Fame against another of unquestionable Character.

He

He will first enquire into the Circumstances of the Affair, and learn somewhat of the Probability of it, before he will administer an Oath to any one on which the Life or Liberty of another depends. And in this Case there is less Danger of an Information absolutely false than almost in any other; it must be known in the Neighbourhood that such and such Parties are actually married, and where they were married; and since you say it is impossible to prove a Negative, I don't see how any Man can swear that the Minister had no Licence, or no valid one, to celebrate this Marriage, since he might have such for any thing that the Informer can certainly know to the contrary. However the Clergy are much obliged to you for your Care of them, and since there is a possible, tho' no probable Danger of their suffering wrongfully on this Occasion, it would no Doubt be a farther Security to them, if the Case was made bailable; and such Bail might be required, at the Discretion of the Justice, as might secure the Punishment of the Guilty, and prevent much Trouble, and Expence, and Inconvenience to the Innocent.

I have the Pleasure of concurring entirely with you in your last Proposal concerning the Case of Banns. *Let the Certificate be sworn to before the next Justice of Peace to the Parish where published; or let the People who bring it authenticate it by Oath before the Minister, to be kept with the Register of the Marriage: And when this is done,*

done, let the Minister be indemnified. This with your other Propofal elsewhere mentioned, of making the Breach of Oath *legal Perjury*, and I add, of making Perjury in this Case *capital*, would prevent the Attempt, and secure the Clergyman from any probable Danger of being at all concerned, even unknowingly, in any false or forged Certificates. Why our Superiors did not make all wilful Concern in forged Certificates of *Banns*, as well as in forged Licences, *Felony*, I do not know. The Guilt of it is the same; the Intent and the mischievous Consequences of it the same; the present Success of it in this Method even more probable, as I should be much more likely to detect a false Licence offered to me, than a false Certificate of *Banns*, which I have no particular Reason to suspect, and which, if I did suspect, I cannot at any Distance of Place, possibly disprove. As the Case now stands, it is easier to obtain a clandestine Marriage by *Banns* than by Licence, and therefore I hope that this Matter will be thought to deserve a Review; that a Fraud in the Case of *Banns* being equally criminal and equally pernicious as in that of Licences, will likewise be made equally penal; and that *Forgery* in all such Cases will be made Felony without Benefit of Clergy.

Your Postscript contains, I think, nothing new, nothing but what has been allowed or answered before. Yet as you seem to lay great

Stress upon it, and are satisfied that your Observations therein would have been regarded, if they could have appeared upon the late Application to Parliament, I shall review them as briefly as I can.

It contains Remarks upon the Form of a Licence, and your first Objection is that the Licence sets forth a general Application; it doth not particularize the Requisites which have been performed, nor any Reasons for dispensing with the Publication of Bans. It presupposes the Oath to be taken; and if, as we have before proposed, a false Oath was in this Case made legal Perjury, there would be no Danger of any ill Consequences. As to Reasons for dispensing with Bans, I need only repeat that Licensees have at present as much Authority as Bans; that therefore no particular Reasons are required; that every one is left to choose which Method he pleases; and that the Oath, if duly regulated, would even be a greater Security than the Publication of Bans.

You next urge that the Minister to whom the Licence is brought, has neither Power nor Time to make the proper Enquiries. Nor would this be material, provided the Prevention of all just Impediments was sufficiently secured by the Oath given to the Person who grants the Licence, and made penal in the highest Degree, if given falsely.

You

You object farther to this Clause, that *in Case there shall hereafter appear any Fraud, &c. then the Licence to be void and of none effect in Law, as if the same had never been granted.* This is no new Clause, and therefore, whether right or wrong, is not to be objected to the late Act concerning clandestine Marriages. This was always found in the common Forms of Licences. Yet you urge as an important Difficulty, *A Man comes to a Minister, brings a Licence, and a Marriage is celebrated in Pursuance of the same. The Fraud appears after; the Licence becomes void: The Issue of the Marriage is illegitimate, though the Marriage is celebrated in Virtue of a legal Licence at the Time of the Marriage.* But be pleased to consider only, what are the just Impediments to Marriage, what those Articles are in which a Fraud will void the Licence; and then your Difficulty will vanish, and you will find this Act less exceptionable in this Point than the former Laws, and that it has even prevented Doubts instead of making them. The only just Impediments are Precontract, Consanguinity and Affinity, or in Case of Non-age, Want of Consent of Parents. The Case of Precontracts heretofore occasioned much Perplexity, in Consequence of the Clause you now object to. A Man who had solemnly engaged himself, nay perhaps was actually married to one Woman, yet swearing there was no Impediment by Fraud obtained a Licence and

and married another. The former Engagement and secret Marriage, was afterwards proved, and by this Clause the Licence should therefore have been void ; yet publick Solemnization of Marriage, and Cohabitation, and Children having followed, it was doubtful whether an After-Separation should be permitted, and many Difficulties arose both in the Courts of Law and Conscience on this Head. But this Case is now cleared by this Act. No Fraud in this Respect affects the Validity of the Licence. Tho' a Man of Conscience will still think himself bound by his first Contract, yet if he breaks thro' it, and marries another Person, his Marriage is now unquestionably valid : and tho' he must repent of his Sin in wronging the Person to whom he made his first Engagement, yet he must now be faithful to the latter, who is his only lawful Wife. There is no Danger of the Children being illegitimated in this Case now, as there was before ; so that we are even obliged to the late Act for settling this Point : and the Difficulties which arose chiefly from this Clause as formerly inserted, are entirely at an End, and your intended Objection turns against yourself.

The next just Objection to a lawful Marriage is Relationship, whether in Point of Consanguinity or Affinity. A Fraud in this Case I hope you will allow ought to make the Licence void, for tho' incestuous Marriages may have been contracted,

contracted, they ought undoubtedly to be dissolved.

The only remaining Impediment is the Want of Consent of Parents or Guardians, where both or one of the Parties is under Age. Whether this does not justify the making void the Licence, has been enough already argued; but I thought it proper to bring again all the possible Cases under View, that it might be seen that there is nothing new in this Objection, nor any real Danger, more than it was intended there should be, in this terrible Apprehension of having the Issue of a Marriage illegitimated, tho' the Marriage was celebrated in Virtue of a legal Licence.

You proceed to ask, *as such Licence, obtained by Fraud, is declared to be void to all Intents and Purposes, will not the Minister incur the Penalty of the Act, which prohibits his Marriage without Licence, that Licence being declared a void one by which he did it?* Certainly not, unless he was privy to the Fraud of the Person who by Perjury obtained the Licence; otherwise there can be no Pretence of his having knowingly and wilfully offended. He has the Licence to produce, to shew the Authority by which he acted, and tho' it is afterwards declared void in Respect to the Person who obtained it, yet this cannot affect him. You may raise possible Difficulties against any Act that ever was or can be made,

made, as plausibly as you have formed this against the present Bill to prevent clandestine Marriages.

You repeat the Objection of the Man's swearing in his own Case, and without Danger, even if he swears falsely, the Breach of his Oath not being declared Perjury. In this I have already agreed with you. If we could obtain this Point, that the procuring a real Licence by a false Oath, should be made Felony as well as the making a false or counterfeit one, I should think the Design was effectually compleated, and should expect to see all the good Consequences follow, which the Wisdom of the Legislature intended by this Act.

You remark farther, that there are two Bonds taken at the Time of granting the Licence; the one (in Pursuance of the Act) for the due Performance of the Surrogate's or Officer's Duty; and the other, from the Party taking out the Licence, that his Motives are just, and that he has not imposed on the Person granting the Licence. As to the former, I shall not object to it, say you, but I desire to observe from it an Error which you had advanced before, that the Archbishop's Surrogates were not bound to give any such Bond. You have now, it seems, found that they are obliged to it; and it would have been right in this Place to have corrected and acknowledged your former Mistake,

K

You

You conclude with an Observation on the Clause in the Bond given by the Person who takes out the Licence, to indemnify the Archbishop, his Commissary of the Faculties, and all other his Officers and Ministers whatsoever, by Reason of the Premisses: This, you say, surely deserves a more than ordinary Observation. The Indemnification is most extraordinary — If the Person granting Licence has done nothing wrong, he wants no Indemnification. If he has done wrong, he ought not to have it: But it happens that the Indemnification intended is not against any wilful Offence which the Person who grants the Licence may have committed, but against any Trouble which he may be brought into through any Fraud of the Person to whom the Licence is granted: We have been talking much, you know, about the Innocent suffering by Means of the Guilty, and this Clause was intended to prevent this in the Instance before us. If the Man who wants to obtain the Licence, obtains it by a false Oath, this may, in future Enquiries into the Affair, bring much Uneasiness and Expence upon the Officer who granted it, and therefore this Provision is properly made beforehand, that if any such Thing should happen, the said Officer shall have sufficient Security that he shall have Satisfaction for the vexations and Costs occasioned to him by the Fraud and Perjury of the other. And was not this Provision very reasonable in itself? was it not

always

always customary? Was not this Clause likewise in all former Bonds which always attended Licences? And was not the Sense of it well known, and agreed to without Difficulty or Objection, till you thus strangely misrepresented it, as if the Person taking the Licence, was to indemnify the Person from whom it was taken, from all ill Consequences of any wilful Misconduct, which the said Officer granting it might knowingly be guilty of in the Method of granting it.

Nor would the Words of the Bond admit the Sense you put upon them. The Condition of the Obligation is, *that the above-bounden shall save harmless and keep indemnified the above-mentioned Reverend Father, his Commissary of the Faculties, and all other his Officers and Ministers whatsoever, by Reason of the Premisses.* And what were the Premisses specified in the former Part of the Bond? Why, that there should not hereafter appear any lawful Let or Impediment by Reason of any Precontract, Consanguinity, Affinity, or any other just Cause whatsoever, but that the said Parties might lawfully marry together. These were all Conditions on the Part of the Man who wants the Licence, and who is likewise sworn to them; and against any ill Consequences arising from a Failure in any one of these, he is obliged to indemnify all the Officers concerned in granting these Licences. But if he is conscious to himself of

acting fairly in this Matter, he does not make himself answerable for all or any of the Faults which those Officers themselves may have committed on their Part in granting those Licences. Provided there was no preceding legal Precontract, no prohibited Degree of Relationship, no Exception in Respect of Age, or Want of Consent of Parents or Guardians, on the Part of the Person taking the Licence, he is sufficiently clear of any farther Engagement by Virtue of his Bond.; and is not obliged to indemnify the Officers, if they should have counterfeited a Seal, or have omitted any necessary Form, or have been guilty of any other Misbehaviour whatsoever. They must stand to the Consequences of their own Errors themselves, for there is nothing in his Bond either expressed or implied to make him responsible for them.

Your extraordinary *Dilemma* therefore is grounded on a most palpable Mistake, and one Part of it is false, and the other foreign to the Purpose. You say, *If the Person granting Licence has done nothing wrong, he wants no Indemnification.* Yes, but he does, against the Troubles he may be liable to, if the Person to whom he grants it, has sworn falsely, and there should hereafter appear any legal Impediments against the Marriage proposed. It is fit that he should be secured against this possible and frequent Case, that he who has done nothing wrong himself, may not suffer thro' the Fault of the other. *If be*

he has done wrong, you say, he ought not to have such Indemnification. I say so too, nor will he find any such in the Bond spoken of, but will be liable to Punishment for his own Offence.

When therefore you add, *Will not this take away the Force of the Clause in the Act for keeping the Surrogates, &c. to their Duty?* and again, *By this Clause, the Person granting the License, and every Officer, &c. belonging to such Person, is to escape with Impunity:* Your Question and Assertion are both to be answered with an absolute Negative. You have mistaken the Case, and argued on a wrong Supposition. You have deceived yourself in the Nature of the Bond, and then founded an Objection upon your own Error.

I have thus offered my Reflections on your Considerations, and have treated them with as much Respect as the Weakness of your Arguments in many Places would admit. We have agreed in our Opinion of the great Necessity that there was for passing some such Bill to prevent the many dreadful Consequences of clandestine Marriages; but we have differed in many Points as to the Expediency of the present Act towards remedying this Evil. You think it absolutely faulty in some Parts; I esteem it only somewhat defective; you are of Opinion that some of the principal Articles in it ought to be repealed; my Judgment is that those very Articles ought to be more strongly secured; you seem

seem to think the Remedy worse than the Disease, and I think that nothing less than this Remedy could possibly prevail for the Cure of this Evil, and that it would still be better, if it was administered with more Efficacy, and in such a Method that the Operation of it could not possibly be prevented. Whether any Regard will be shewn to what either you or I think on this Subject, Time alone can shew.



P O S T S C R I P T.

SINCE I made the foregoing Observations upon your Pamphlet, I have seen *an Enquiry into the Force and Operation of the annulling Clauses, in a late Act for the better preventing clandestine Marriages, with Respect to Conscience*. It appears to be the Performance of a pious Writer, from whom I unwillingly differ, but to whose Judgment I can by no Means subscribe. I have taken some Pains to understand him, and think I shall not do him Injustice in the following Abridgment of his State of the Case, and representing his Opinion in this Manner.

“ That which constitutes the Marriage Contract, is *that Faith* by which the Man and “ Woman bind themselves to each other to live “ together as Man and Wife. The Law of
“ Nature

" Nature prescribes no particular Form in which
 " this Contract shall be made; but in what
 " Words and under what Circumstances soever
 " it be made, and whether with Witnesses or
 " without, the State of Marriage arises imme-
 " diately upon it, binding the Consciences of
 " both Parties, especially if Confummation
 " follows. (p. 25.) — The Capacity which qua-
 " lifies Persons to make the Marriage-Contract
 " is, that they be *sui Juris*, or that the Thing
 " about which they contract, be in their own
 " Power; and that there be a Sufficiency of
 " Reason or Understanding to enable them to
 " discern what it is about which they contract,
 " and what is the proper End, Use and Effect
 " of such a Contract. (p. 6.)

" All Persons have a Sufficiency of Know-
 " ledge to make this Contract, who understand
 " that by it they bind themselves to live to-
 " gether as Man and Wife, in mutual Love
 " and Fidelity, for the Purpose of Procreation,
 " and for the joint Support and Protection of
 " their Offspring. (p. 6, 7.)

" Every Child who has a Capacity that qua-
 " lifies him or her to make the Marriage-Con-
 " tract is (naturally) in this Respect *sui Juris*.
 (p. 7.)

" The intervention of Society makes no Al-
 " teration in the Case. — As in a State of Na-

“ ture the decisive Right of contracting Marriage lies in the Child, so it must under Society, unless the Child is to be understood as having made a Cession of this Right into the Hands of Society—But a Cession of natural Rights can have no Place but in such Things as are *naturally alienable* (p. 11.)

“ The free Use of this Right may be necessary to secure a Man’s Virtue. See *Mat.* xix. “ 11. 1 *Cor.* vii. 8, 9.—Every one has not the Power of Contingency; and Fornication is a Sin against the natural Law as well as against the Law of Christ.—It follows then that no Man by entering into Society, can or ought to be presumed to have yielded up into the Hands of the Society, his natural Right to contract Marriage, as shall seem to him most expedient for the Security of his Virtue. He cannot yield it up. It is a Right *unalienable* (p. 12, 13.)

“ It is carefully to be observed that the legal Form of contracting Marriage hath nothing to do with the Essence of the Contract as it lies before God. (p. 15.) The present Act —hath not altered, nor can any Law alter the Nature of the Contract as it concerns Conscience, which, the Right of contracting supposed, is full and compleat in the mutual Stipulation of the Parties as known to God. (p. 16.)

“ Con-

“ Conscience stands as firmly bound by the
 “ Contract how privately soever made, as if it
 “ had been made in a Church with all the Ce-
 “ remonies and Formalities of Law. (p. 17.)

“ The Act may make it to be no *legal* Mar-
 “ riage, but it does not make it to be absolute-
 “ ly *no* Marriage, for what in the View of
 “ Law is null, in the Views of Religion and
 “ Conscience may bind. (p. 18.)

“ No Law in the World can make that
 “ which in the Nature of it is a Contract, to
 “ be no Contract, or that which in the Nature
 “ of it is binding not to be binding. And what
 “ is Marriage but a Contract binding upon both
 “ Parties to live together as Man and Wife? ”
 (p. 19.)

The principal Thing in Question seems to me to be here taken for granted instead of being proved. “ The Marriage-Contract is said to be that “ Faith, by which the Man and Woman *bind* “ *themselves* to each other to live together as “ Man and Wife.” This is a Contract binding on Conscience in order to Marriage, but does not in my Judgment become a *Marriage-Contract*, till it is publickly professed and solemnized in the Manner that the Laws under which a Man lives, require. Yes, it is said, “ the Law “ of Nature prescribes no particular Form in “ which this Contract shall be made, but in

L 2 “ what

" what Words, and under what Circumstances
 " soever, it be made, and whether with Wit-
 " nesses or without, the State of Marriage arises
 " immediately upon it." This I think an errone-
 ous and a dangerous Assertion. The Law of Na-
 ture, tho' it prescribes no particular Form of Mar-
 riage, yet obliges social Creatures to conform to the
 Laws of the Society under which they live; and
 since this Society has prescribed a Form of Mar-
 riage, in this Sense it is confirmed by the Law
 of Nature: and it is so far from being true,
 that upon a private Contract made in any
 Words, or under any Circumstances, and with-
 out Witnesses, the State of Marriage arises im-
 mediately upon it, especially if Consumption
 ensue, that nothing in this supposed Case ensues
 but a State of Fornication, which Conscience
 must condemn, and which is directly opposite
 to the Laws of God and Man. " Fornication,"
 says this Gentleman himself, (p. 23.) " is not
 " a Word invented by Scripture, but taken
 " from the common Usage of all Nations, and
 " always applied to such as had Commerce
 " together without being contracted according
 " to the legal Forms. But if such Contracts,
 " for Want of the legal Forms will not justify.
 " Cohabitation as Man and Wife, no Man in his
 " Senses will pretend to say that they are there-
 " fore null." But still I say these are as yet no
 Marriage-Contracts. As every Person is bound
 to be faithful to his Promises, these Contracts
 are so far binding on Conscience, that they who
 have

have made them, ought, as soon as possible, to verify them in the legal Form : but till they do this, they are not in a State of Marriage, but in a State of sinful Commerce. Neither this Act, nor the Defenders of it, pretend to absolve Men from their Promises ; if Persons have made private Contracts between themselves, they ought to make them good by a publick Solemnization of Marriage ; but till they do, they ought not to live together as esteeming themselves sufficiently married by having taken one another's Words. It grieves my Soul to hear a good Man approving that common Saying among the Country-People, who live together tho' unmarried, " that they are *Man and Wife before God,*" " and hoping that no new Laws will ever beat " " them out of this old Notion." (p. 19.) I think they are so far from being *Man and Wife before God,* that they are in his Sight guilty of a damnable Sin, and that they cannot shew their Repentance but by abstaining immediately from all farther Commerce with each other, or legitimating it by publick Marriage. Our common People need frequent Admonitions upon this Head; and this same old Notion of theirs is the Occasion every Day of their entering into a State of criminal Conversation, and continuing in it. I must however do this Gentleman the Justice to say, that himself has elsewhere advanced a Doctrine, which would root out this old Notion, and which I hope will be much oftener founded in the Ears of our Country-People. He says,

(p. 22.)

(p. 22.) " If two Persons in Contempt of the
 " Laws of Society, whilst the legal Forms are
 " open to them, shall cohabit together as Man
 " and Wife, under a private Contract, it is an
 " Offence to God, and one Species of that un-
 " lawful Commerce which the Scripture calls
 " Fornication."

Well then, we have gained thus much, that whilst the legal Forms are open, this same private Contract made in any Words, or under any Circumstances, and without Witnesses, upon which the State of Marriage is said immediately to arise, especially, if Consummation ensues, is not only no *legal* Marriage, but an Offence to God, and no other than Fornication. I scarce know how to say any thing severer of it, and think we seem to be agreed about the Thing, but differing about the Word: Verbal Disputes are scarce at any Time worth pursuing, yet I cannot but grudge that this iniquitous Commerce should still have the honourable Title of the *State of Marriage* attributed to it.

But we must still consider the saving Clause. This Cohabitation upon a private Contract is allowed to be criminal, only *whilst the legal Forms are open to them*. They are open by the late Act to all, after the Age of twenty-one Years, so that not even the Consent of Parents is required after that Age. This abridges the Controversy much, for the only remaining Question

Question is, concerning *Infants*, whom the Law does not allow to be of Years of Discretion so much as to manage their own Fortunes, or to make any other Contract of any Consequence.

Yet even these are said by the Law of Nature to be *sui Juris*, and that "the Intervention of Society makes no Alteration in the Case, unless the Child is to be understood as having made a Cession of this Right into the Hands of the Society. If such a Cession may be presumed, it shall be granted that so far the Person is not *sui Juris*, and therefore unqualified to make a Contract. For a prior Contract subsisting with the Society, all subsequent Contracts made in Contravention to it, must be void."

But it is added, that "a Cession of natural Rights can have no Place but in such Things as are naturally alienable—that the free Use of this Right may be necessary to secure a Man's Virtue—that therefore it is a Right unalienable."

A Matter of Fact arises upon this State of the Case, which this Gentleman has not failed to discern, and to take Notice of. He puts the Case thus. "Is it so hard a Thing for young Persons to abstain from Marriage for three or four Years, and keep themselves honest too?" And he answers it by an Appeal to

Fact,

Fact, as if convinced that it was indeed hard. But he should have said, Is it an *impossible Thing?* for as to Hardships, People are by the Course of God's Providence in many Cases obliged to submit to them, to preserve their Virtue; and they may in this as well as other Instances be permitted to lie under Temptations, and struggle with Difficulties, and yet be under Obligations by the Laws of God and Man to contend with them for a Season, and to *keep themselves honest* in this Respect. As to his Appeal to Fact, I shall only observe that very few Persons in Comparison marry before the Age of twenty-one, and that it would be very uncharitable to suppose the Majority of both Sexes before this Age dishonest.

When our Saviour said, *Mat. xix. 11. All Men cannot receive this saying save they to whom it is given:* and *St. Paul, 1 Cor. vii. 9. If they cannot contain let them marry, for it is better to marry than to burn,* they neither of them spoke of a temporary Restraint, but of an entire Abstinence from Marriage, and we may very consistently approve of the former, and yet severely condemn the latter. A single State is supposed, both by our Lord and his Apostle, to be, with some Persons particularly, a State of Temptation, and according to the general Doctrine of avoiding Temptations, it may be the Duty of such Persons to get out of that State as soon as they can, and to secure their Virtue by lawful

lawful and honourable Marriage. A Vow of perpetual Celibacy in such as these would be an Act of presumptuous Wickedness, as it would be “ a *Renunciation* of the Means appointed by God for the Preservation of Chastity.” Here I agree with this Gentleman, and upon this Principle condemn the monastick Vows as sinful and unlawful. The Impossibility of their ever getting free from them would, in the Season of Temptation, drive them to Despair, and to immediate wicked Indulgences, and is known by Experience, as well as in Speculation, frequently to work this Effect. As there is no Hope of their ever enjoying the regular Comforts and Advantages of the married State, they are driven almost necessarily into the grossest and most unnatural Irregularities; and to the Temptations arising from Nature, having added others by their voluntary Obligations, and their Exclusion of the proper natural Remedy, have thereby perhaps rendered Continence impracticable—But this is not the Case of Children under Age. They have a comfortable Prospect before them of a Season speedily approaching, wherein they will be entirely at their own Liberty in this Respect, and thro’ this Prospect may with some Satisfaction submit to a present Restraint; may “ abstain from Marriage for three or four Years, and keep themselves honest too.” They will have free Leave from all the Laws of God and Man to choose for themselves, as soon as they have Power to enjoy

joy or dispose of their own Fortunes; and they may soon discern the Wisdom as well as Lawfulness of laying them under some Restraint under both Respects, and that they should not have an absolute Right to dispose of their Persons for Life, before they are thought competent Judges to dispose of any Part of their Properties. Both these Provisions are calculated in their Favour, are such as themselves, when they are really good Judges, will think right and proper; and therefore "every Man, by " entering into Society, may reasonably be presumed to have yielded up into the Hands of " Society, his natural Right to contract Marriage" for this Infant-Season; he may be supposed to have submitted to this Restraint *with Consent for a Time*, without subjecting himself to any necessary Breach of his Virtue, I might add, even as a greater Security to it.

What are the daily Consequences, not only with Respect to Comfort but to Virtue, of early Marriages contracted against the Consent of Parents, numberless Examples testify. How few are faithful to a Contract made merely on the View which is here supposed, without Consideration of the suitable Qualifications of the Person with whom a whole Life is to be spent? How few, who choose before they are of Age to make a wise Choice, and in Opposition to the Judgment of those who are better qualified, have ever justified

ed their Choice by their After-Conduct? or have not afterwards betrayed their Folly by their Wickedness, and by their Inconstancy have shewn their Repentance of their first inconsiderate Contract?

This Gentleman says he has "seen many Instances of Matches that *would* have been stopped by the Parents, that have turned out well." But were they of Children, who in Violation of the Duty that he allows they owe to Parents, married in their *Infancy*, before the Age that the Law now permits them to choose for themselves? I dare say, very few such can be produced; if any can, I will undertake to balance them with many more Instances on the other Side; and could point to Examples not only of Want of domestick Comfort, but of scandalous Violations of the Marriage-Contract which have been occasioned by those undutiful, under-aged Marriages. If his Instances of unexpected Happiness in prohibited Matches, have happened among Persons of riper Years, they are not within the present Question. I am only pleading for the Reasonableness of the Law now in Being, which restrains them from choosing for themselves, till the same Age that is judged the proper one for possessing their Fortunes. If young Persons take a Liking to each other, and propose a Contract which is disapproved by Parents, let them wait till the Age which is fixed by the Law. If they persevere in their mutual good Liking till that Time, there will be more

Probability of their future Happiness ; and perhaps of their gaining the Consent of Parents, when these see it is not a mere sudden Passion which has moved them to desire to be joined together. I am very ready to allow that the final Decision should be left to the Parties themselves, only let it be deferred, if their Parents disapprove it, till they are of an Age to make a reasonable Choice, and the Law has not set them a *long Day*. I have no Objection to make to what is said on the Benefit of *unequal* Matches, nor any Desire of vindicating those (if such there are) who would have it *absolutely* in their Power to prevent *unequal* Matches. But all such as are really likely to be of Service to the Publick, or to particular Persons, are such as are founded on a constant rational Affection, and not on a sudden Warmth of Passion, before Reason can be supposed to be a more sufficient Guide in such Matters. The Person of the highest Rank and Fortune, may now, independently of the Opinion and Approbation of all Men living, choose a Partner for Life from any Station, at the Age of twenty-one Years ; and may perhaps be much the happier for this Privilege : but it is a Privilege that in all Reason ought to be deferred till this Age, as it would be the greatest Snare to Ruin before it. This Gentleman himself who is for " following " the natural Law, and giving to Children the " decisive Voice as having the *principal Interest*," yet adds, " But yet under such Checks till they " are one-and-twenty Years of Age, as should

" oblige them to consult their Parents." This I agree to, but have already shewn that I think no such Check can be sufficient, but that which the late Act has provided.

To recapitulate what has been said. This Gentleman says, " there is but one Supposition upon which it is possible that the Laws of Society can make a Marriage to be no Marriage, and that is, that by entering into Society a Man commits his natural Right to contract Marriage to the Will of the State ; for upon this Foot the Man will not be *sui Juris*, and the Contract will be null both in Law and Conscience. But the contrary to this I have been endeavouring to prove. If I have not done it, I have done nothing, and all that I have said is to pass for nothing." (p. 20.)

The Argument used is, that it was a Right unalienable, because the *free Use of it might be necessary to secure a Man's Virtue*, and therefore *he has it not in himself to dispose of*. Now this I apprehend is a Mistake in the State of the Case. A Man to whom the Right of Marriage is freely reserved, as early as even the Right of his own Estate, may, notwithstanding any thing which is said in Scripture, have Power enough over his own Will, to keep himself innocent till that Time ; and if this be fact, all the forementioned Reasoning falls to the Ground. This Gentleman observes of the Men, " that they very rarely

" rarely choose to marry so early," p. 25. I am sure he did not mean to suggest that early Marriage was more necessary to preserve the Virtue of the *Women* than of the *Men*; and if not, then by his own Concession this supposed Necessity is a very rare Case. This is a tender Point to speak of, otherwise this supposed immediate Necessity without any Delay, would be liable to many Objections, which I choose not to specify : It might be urged as forcibly against long Courtship, as against deferring Marriage till the Age of twenty-one Years; and if a Man must wait till he can gain the voluntary Consent of the Party proposed, I see not why he may not as well wait, till he can gain the Consent of Parents, or the Age prescribed by the Laws of the Land.

Temptations there may be in the intermediate Season, but not insuperable ones, when the Time is well known when he shall be absolutely free in his own Choice, whereas in Convents they are heightened by utter Hopelessness of being ever in a more comfortable Situation. The Leisure and Inactivity of a monastick Life gives a farther Strength to those Temptations, whereas young Persons are, or ought to be, always usefully employed during the short Season we are speaking of. Let them be instructed in good Principles; let them be engaged in proper Business, which may fill up their Time and Thoughts; and they will not find themselves under any Necessity of violating the Laws either
of

of God or Man. Nor is there any Inconsistency in disallowing the Popish Vows of *perpetual Celibacy*, and yet justifying the Act which forbids Marriage without Consent of Parents, till the Parties themselves have attained the supposed Years of Discretion.

If what I have observed be true, then the Ground on which this is declared an *unalienable Right*, proves wrong. " Every Man," it is said " has a natural Right over his own Body, " but it is a Right for Preservation, and not for Destruction. He cannot therefore make a Cession of this Right to another so as to bind himself to be fed, or clothed, or otherwise treated, just as that other pleases. He must consult his own Necessities." (p. 11, 12.) Upon this Principle how can a Man be supposed to give up the Power over his own Life, into the Hands of Society? Yet has not the Society such a Right? The Case, as I conceive it, is that God made us Members of Society, and that we did not make ourselves such: and that as Society was instituted for the Good of All, the Preservation of Individuals is indeed consulted, but can be so far only consulted as is consistent with the Security and Welfare of others. In the original Intention it is a Right for Preservation and not for Destruction, yet in the Event it may prove for the Destruction of him, whose Misconduct has rendered them injurious to the Publick, which in such Case has an undoubted

undoubted Right to feed, clothe or otherwise treat that Delinquent, as shall be thought good.

In the present Case the Act for restraining the Liberty of Marriage till such an Age, unless Consent of Parents be obtained, is intended for the Preservation and Advantage of every Individual; and the apparent good Consequences are so many and great, that with me the only Matter of Wonder is, that this wise Provision was not made sooner, and the miserable Effects of clandestine Marriages prevented. And this Right cannot even *eventually* prove to the Destruction of any one, unless it should prevent a Possibility of preserving his Innocence, as this Gentleman supposes. I suppose the contrary, that he may both comply with this Act, and yet continue innocent; and if so, then with respect to *temporal* Advantages, it is certainly an *alienable* Right, and must be supposed to be transferred into the Hands of Society, by the very Nature of Society itself. This Conclusion, I think, will not be disputed with me, after the Concessions elsewhere made by this Writer.

He says himself, “ upon this Foot the Man will not be *sui Juris*, and the Contract will be null both in Law and Conscience.” (p. 20.) This is yielding perhaps more than all the Advocates for the late Act would require of him. For why may not his own Distinction
in

in a Case of Debt, be as valid in this Case ? He says, " What in the View of Law is null, " in the Views of Religion and Conscience " may bind. As for Instance. If a Minor " makes a Contract to pay a Sum of Money " after he comes of Age, the Contract is void " in Law. And yet (as the Case may be put) " Conscience binds him." (p. 18.) And why may not the Case be put in the same Manner as to a Contract for Marriage ? The Distinction in the Margin does not satisfy me, " The Contract," it is said, " is founded upon an inherent original Right of which the Law neither does nor can divest him." Does not this hold equally in both Cases ? I think he seems to say so himself, " So in the Case of Marriage, the Law neither does nor can settle the Commencement of the Right of contracting, which is originally founded in the Law of God; it can only affect its civil Operations." Very well. All that the Law says then in either Case is that Men shall not be legally compellable to make good a Contract, either for Marriage or for Debt, made without Consent of Parents or Guardians before they were of Age. It does not allow them an absolute Disposal either of their Persons or Properties in their State of Infancy. But though they are not compellable, they may, if they please, make good those Contracts afterwards ; and it may lie upon their Consciences so to do, tho' they could not

fulfil them, when they first made them. They were not so far *sui Juris* as to dispose of themselves, or their Fortunes independently of the Laws of Society, yet they might make such Promises that they would do it hereafter, as may bind their Consciences when they attain the legal Age. And therefore I do not see the Force of the Consequence beforementioned, that " if " the Man be not *sui Juris*, the Contract will " be null both in Law and Conscience."

What this Gentleman says elsewhere, that " No Law in the World can make that which " in the Nature of it is a Contract to be no " Contract; or that which in the Nature of it " is binding not to be binding," seems of some Force against his own Opinion last-mentioned, though of no Weight against the late Act. It shews that what is void in Law may be of Force in Conscience, and if it is so, it may be made good in Law, as soon as ever the Parties are of Age, notwithstanding any thing in the late Bill. This only provides that they shall not dispose of themselves in Marriage without the Consent of their nearest Relations, till they are of such an Age. If they promise one another in private, that they will marry hereafter when they come of Age, the Law meddles no farther with that Promise, than that they shall not be compellable to fulfil it; but they are at Liberty to do it, if they please, and their

their Promise is certainly binding on Conscience.

But it is said, " that *essentially* there is no Difference between a Precontract and a Marriage." (p. 19.) There is in my Opinion this *essential* Difference between them, that the one is a Promise to do a Thing, and the other is the Performance of the Thing that was promised.

It is said again, that " it is carefully to be observed that the legal Form of contracting Marriage hath nothing to do with the Essence of the Contract as it lies before God. This was the Doctrine of all our Laws before this Statute was made ; and therefore if two Persons contracted Marriage in a private Way, the Ecclesiastical Court, upon Proof of such a Contract would oblige them to celebrate Marriage in *Facie Ecclesiae*." p. 15.

But the Law even then made a Difference between Contracts made *per Verba de præsenti* and *per Verba de futuro*, the former only were obliged to be celebrated again publickly, yet the Essence of the Contract, as it lies before God, was the same. He who promised a Woman to make her his Wife, whether by saying *I do take* you, or *will take* you as such, was equally bound in Conscience to fulfil his Promise, tho'

the Law at that Time made a Difference. It is now, to prevent many intricate Disputes and Differences, provided that no private Forms whatever between Persons under Age, and not properly licenced, shall bear any publick Authority, shall make those Persons Man and Wife, or shall compel them to become such hereafter. What they are obliged to in their own Consciences in this Case, stands just as it did, and by all Means let them be influenced by it. But it is hereby declared that no Forms whatever that are used between the Parties alone, can mean more than a Promise of future Marriage, which I think makes the Difference extremely clear between a publick and private Contract, between the Obligation on Conscience, and the Obedience due to the Law, between an Engagement to marry, and the Completion of that Engagement.

When therefore this Gentleman says, that "when the Contract is once made, no Person on Earth can destroy it," (p. 21.) I must distinguish before I can either assent to, or deny his Proposition. Every Promise is binding on Conscience, and know no human Power that can dispense with the Performance of it. If a Man breaks his Promise, he is guilty of a Sin before God, and as much in this Case as in any other, and as much since this Law was made, as before. But I deny that a private Contract is

is an actual Marriage, or that the Laws have not Power to declare it otherwise. The Power therefore does not destroy the Contract; it only shews how far a private Engagement can reach.

" Various " says this Writer, " are the Falacies by which this plain Truth is kept out of the Sight of many. Some will tell you that Marriage is a mere *civil Contract*, and therefore may be discharged by the *civil Authority*. But do they understand what they say? It is more than I do." (p. 21.) And then he goes on rightly to observe that every Contract of every Kind is made under the Inspection of God. I can only say that I should not have expressed my Sense of this Point (as here stated and answered) in the Words above-mentioned. The Question is not, I think, properly whether Marriage, as being merely a *civil Contract* can, after it is made, be discharged by *civil Authority*, but whether as being a Contract partly of a *civil Nature*, it can be contracted at all, not only without, but in *Defiance* of *civil Authority*. I am of the Opinion of that old Casuist who says, that " Matrimony hath something in it of Nature, something of Civility, something of Divinity, as instituted by God, and by him to be regulated," (Hall's Cases of Conscience, p. 295.) and therefore I think the Authority of all must concur to make a Marriage; and that since the Law

Law of God has not prescribed the particular Form, but has left that to be determined by the Law of the Land ; since the Law of the Land has interposed and prescribed a particular Form; therefore all the Members of Society are even in Conscience bound to comply with it, and contract not Marriage but a scandalous Engagement, if they come together upon any other Terms. I do not say then that this is a *mere civil Contract*, and therefore may be discharged by the *civil Authority*; I acknowledge it to be a *religious* as well as a *civil Contract*, but I add that it is a Contract in which Society is interested, as well as the individual Persons concerned, and that therefore it must be regulated by the Rules of Society, and is not to be esteemed a Marriage, if it has not been so regulated. That a Contract of this Kind thus duly compleated, can afterwards be discharged by any Authority, I am as ready to deny as this Gentleman. Marriage is sacred and indissoluble, and has been declared to be so by the highest of all Authority. All that I contend for is, that Cohabitation between a Man and Woman, who have only taken one another's Words, or have not complied with the legal Forms, is *no Marriage*, but a wicked infamous State of *Fornication*.

I desire as much as any one living, " that
 " Men and Women may not play with Mar-
 " riage-Contracts, as Children do with *Shuttle-*
 " *Cocks.*"

" Cocks," as it is expressed in the Pamphlet before me (p. 23.) : but I likewise earnestly desire that they may not be taught, that " in what Words and under what Circumstances soever a Contract be made, and whether with Witnesses or without, the State of Marriage arises immediately upon it,—and that *they are Man and Wife before God,*" whilst they live in a wilful Disobedience to the Laws of God and Man, and are, by the Confession of this Writer himself, in no other than a gross indefensible State of Fornication.

But I have another, and, if possible, more material Objection to the main Principle on which this Pamphlet is founded, namely that a private Contract is of as much Force as a publick one " made within a Church with all the Ceremonies and Formalities of a Law," and that " the State of Marriage arises immediately upon the former" as much as upon the latter. This would not only be the Occasion of much Disorder and Irregularity, and be made the Jusification of the Licentious, but it would involve the good and the well-disposed in inextricable Scruples and Difficulties. For a Case of Conscience presently arises upon the Supposition of an After-Marriage with another Person, and not with that Person to whom

whom the first Promise was made in private: and this Case, I think, we must determine differently according to our different Principles. If the State of Marriage arises immediately upon a Promise given with or without Witnesses, to live together as Man and Wife, then if either of these Parties afterwards break this private Promise, and marry publickly another Person, then I say, this latter Engagement is to be esteemed as an adulterous Commerce, and the innocent Party thus married, as soon as this former Promise is come to his or her Knowledge, ought to look upon himself or herself as joined to the Husband or Wife, of another Person, and therefore to separate immediately from this unlawful Cohabitation. What endless Confusion would this Doctrine create? Who could be secure at any Time of marrying honestly and honourably? Who could be sure that the Party making his Addresses, or the Party to whom the Addresses are made, had never in secret promised another Person? If they had, they are, it seems, married already, and then a second Marriage, whilst the former Party is yet living, can be no other than a State of Adultery. Thus I think this Gentleman must certainly determine, to be consistent with himself; who holds that a publick Solemnization of Marriage is not necessary to the Notion and Obliga-

Obligation of it, but that a private Contract is altogether as valid, and that there is no essential Difference between a Precontract and a Marriage.

Now on the other Hand, I hold, on the Side of the Laws, that a Precontract is only a Promise of Marriage, which a Man is bound in Conscience to make good, but if he fails herein, and marries publickly another Person, he has been guilty of a Breach of Promise only, and not of a Violation of an actual Marriage. The publick Contract is the lawful and honourable one, which he is now bound to abide by, and which the Woman, whom he has newly engaged in these legal Forms, may and ought without Scruple to continue in, though she should know afterwards that he had broke his Word to another Person whom he had formerly promised to marry. Upon this Footing there will be no great Hazard in venturing upon a publick Marriage, for a common Degree of Care, especially after the Regulations of the late Act, will ensure one from being ensnared by a Person who is already married; but no Precaution could secure one from contracting with the Husband or Wife of another Person, if nothing more was necessary to make them such, than a private Engagement between themselves.

O

If

If some Things have been repeated in these and the foregoing Observations, perhaps it could not well be avoided, as the same Corrections have been differently stated: Or if it was not unavoidable, it may be excusable. I have desired to be intelligible and clear, and to express and reconcile a just Regard to the Laws of God and Man. I have shewn, or endeavoured at least to shew, that the late Act does not set aside the Obligations of Conscience, but has better cleared and better confirmed them: and it is so far from repealing the Law of Christ, as has been pretended, that it is calculated to secure the Virtue and promote the Welfare of his Disciples: which was the Intent of his whole Dispensation, and more particularly of his Declaration of the Unity and Indissolubleness of the Marriage-Contract. The late Act by determining so clearly and so reasonably what is, and what is not to be esteemed a Marriage, has contributed much to the Security and the Dignity of that Relation; for both the Holiness and the Happiness of Mankind are much interested in that Determination.

F I N I S.